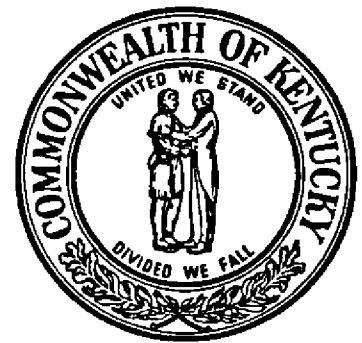


# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 36, NUMBER 6  
Tuesday, December 1, 2009

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#### MEETING NOTICE: ARRS

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet December 8, 2009 at 1:00 p.m. in room 149 Capitol Annex. See tentative agenda on pages 967-969 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2009 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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**KENTUCKY ADMINISTRATIVE REGULATIONS** are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

Title	Chapter	Regulation
806	KAR	50: 155
Cabinet, Department, Board, or Agency	Office, Division, Board, or Major Function	Specific Regulation

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, DECEMBER 8, 2009, at 1:00 p.m., Room 149 Capitol Annex**

**KENTUCKY STATE BOARD OF ELECTIONS**

**Statewide Voter Registration**

31 KAR 3 010. Current address of Kentucky registered voters and distribution of voter registration lists.

**PERSONNEL CABINET  
Office of the Secretary**

**Personnel Cabinet, Classified**

101 KAR 2.066 & E. Certification and selection of eligibles for appointment. ("E" expires 1/4/2010) (Deferred from September)  
101 KAR 2:120. Incentive programs. (Deferred from September)

**FINANCE AND ADMINISTRATION CABINET  
Office of the Secretary**

**Purchasing**

200 KAR 5 315. Suspension. (Amended After Comments) (Deferred from September)

**Kentucky Private Activity Bond Allocation Committee**

200 KAR 15:010. Formula for allocation of private activity bonds. (Not Amended After Comments)

**GENERAL GOVERNMENT CABINET  
Kentucky Real Estate Commission**

**Commission**

201 KAR 11:190. Disciplinary proceedings. (Not Amended After Comments) (Deferred from October)  
201 KAR 11:250. Listing and purchase contracts and other agreements entered into by licensees; provisions required; seller-initiated re-listing request disclosure form. (Deferred from September)

**Board of Barbering**

**Board**

201 KAR 14.056. Repeal of 201 KAR 14:055.

**Board of Speech-Language Pathology and Audiology**

**Board**

201 KAR 17.011. Requirement for interim licensure as a Speech Language Pathologist. (Deferred from November)  
201 KAR 17 012. Requirements for licensure of a Speech-Language Pathologist. (Deferred from November)  
201 KAR 17.025. Requirements for an interim license as a Speech-Language Pathology. (Deferred from November)  
201 KAR 17 027. Supervision requirements and caseload limitations of Speech-Language Pathology Assistants. (Deferred from November)  
201 KAR 17 030. License fees and renewal requirements. (Deferred from November)  
201 KAR 17 032. Requirements for interim licensure as an Audiologist. (Deferred from November)  
201 KAR 17:034. Requirements for licensure as a Speech-Language Pathology Assistant. (Deferred from November)  
201 KAR 17.036. Requirements for licensure for an Audiologist. (Deferred from November)  
201 KAR 17.038. Caseload limitations. (Deferred from November)  
201 KAR 17.041. Professional code of ethics. (Deferred from November)  
201 KAR 17.090. Continuing education requirements. (Deferred from November)  
201 KAR 17:100. Clinical practice by licensed speech-language pathologists and audiologists in the area of minor training. (Deferred from November)

**Board of Podiatry**

**Board**

201 KAR 25:012 & E. Licensing examinations. ("E" expires 2/15/10) (Deferred from November)

**Board of Licensure for Marriage and Family Therapists Associates**

**Board**

201 KAR 32:035. Supervision of marriage and family therapist associates

**Board of Licensed Professional Counselors**

**Board**

201 KAR 36.060. Qualifying experience under supervision. (Deferred from November)

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources**

**Fish**

301 KAR 1:016. Use of lands and waters on lakes owned or controlled by the department.

**Game**

301 KAR 2:142. Spring wild turkey hunting. (Not Amended After Comments)

**Hunting and Fishing**

301 KAR 3.022. License, tag, and permit fees.

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Kentucky State Police  
Technical Services Division**

**Polygraph**

502 KAR 20:020. Detection of deception examiners. (Deferred from November)

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**GENERAL GOVERNMENT  
Department of Agriculture  
Office of Agriculture Marketing and Promotion**

**Marketing and Product Promotion**  
302 KAR 39:020. Kentucky Small Farm Wineries Support Fund.

**ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Water**

**Public Water Supply**

401 KAR 8:030. Water treatment plant and water distribution system classification and staffing. (Amended After Comments) (Deferred from November)  
401 KAR 8:040. Laboratory certification.  
401 KAR 8:100. Design, construction, and approval of facilities.

**Division of Compliance Assistance**

**Certified Operators**

401 KAR 11:001. Definitions for 401 KAR Chapter 11. (Amended After Comments) (Deferred from November)  
401 KAR 11:010. Boards of certification. (Amended After Comments) (Deferred from November)  
401 KAR 11:020. Standards of professional conduct for certified operators. (Amended After Comments) (Deferred from November)  
401 KAR 11:030. Wastewater treatment and collection system operators, classification and qualifications. (Amended After Comments) (Deferred from November)  
401 KAR 11:040. Water treatment and distribution system operators, classification and qualifications. (Amended After Comments) (Deferred from November)  
401 KAR 11:050. Operator certification. (Amended After Comments) (Deferred from November)

**Division of Waste Management**

**Solid Waste Facilities**

401 KAR 47:090. Solid waste permit fees. (Amended After Comments) (Deferred from September)

**Division for Air Quality**

**Attainment and Maintenance of the National Ambient Air Quality Standards**

401 KAR 51:001 & E. Definitions for 401 KAR Chapter 51. ("E" expires 3/13/10) (Amended After Comments)  
401 KAR 51:017 & E. Prevention of significant deterioration of air quality. ("E" expires 3/13/10) (Amended After Comments)  
401 KAR 51:052 & E. Review of new sources in or impacting upon nonattainment areas. ("E" expires 3/13/10) (Amended After Comments)

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections**

**Office of the Secretary**

501 KAR 6:020 & E. Corrections policies and procedures. ("E" expires 3/10/10) (Deferred from November)

**Department of Corrections**

**Office of the Secretary**

501 KAR 6:999 & E. Corrections secured policies and procedures. ("E" expires 3/10/10) (Deferred from November)

**TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Drivers License**

**Driver's License**

601 KAR 12:060. Hardship driver's license.

**Certification of Title**

601 KAR 23:010. Classic motor vehicle project.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
Division of Licensing**

**Thoroughbreds**

810 KAR 1:025 & E. Licensing thoroughbred racing. ("E" expires 3/29/10)

810 KAR 1:034 & E. Licensing of racing association. ("E" expires 3/29/10)

**Harness Racing**

811 KAR 1:034 & E. Licensing of racing associations. ("E" expires 3/29/10)

811 KAR 1:070 & E. Licensing standardbred racing. ("E" expires 1/16/2010) (Deferred from October)

**PUBLIC PROTECTION CABINET  
Department of Housing, Buildings, and Construction  
Division of Building Code Enforcement**

**Kentucky Building Code**

815 KAR 7:070. The Kentucky Certified Building Inspector Program.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Health Policy**

**Certificate of Need**

900 KAR 6:030. Certificate of need expenditure minimums.

**Department for Medicaid Services  
Division of Medical Management**

**Medicaid Services**

907 KAR 1:715. School-based health services. (Amended After Comments)



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**Department for Community Based Services  
Division of Protection and Permanency**

**Child Welfare**

922 KAR 1:060 & E. Federal Title IV-E adoption assistance. ("E" expires 3/29/10)

**Department for Aging and Independent Living  
Division of Guardianship**

**Guardianship**

922 KAR 5:061. Repeal of 922 KAR 5:060. (Deferred from November)

**Department for Community Based Services  
Division of Family Support**

**Community Action Agencies**

922 KAR 6:010 & E. Standards. ("E" expires 2/24/10) (Deferred from November)

**REMOVED TO JANUARY 2010 AGENDA**

**COUNCIL ON POSTSECONDARY EDUCATION**

**Nonpublic Colleges**

13 KAR 1:020. Private college licensing. (Comments Received)

13 KAR 1:040. Definitions for independent colleges. (Deferred from November)

13 KAR 1:050. Licensed out-of-state college's eligibility for Kentucky tuition grant. (Comments Received)

**Public Educational Institutions**

13 KAR 2:045 & E. Determination of residency status for admission and tuition assessment purposes. ("E" expires 4/11/10) (Comments Received)

**KENTUCKY STATE BOARD OF ELECTIONS**

**Electronic Voting Systems**

31 KAR 2:010. Preparation of ballots and voting systems prior to election day. (Comments Received)

31 KAR 2:020. Accuracy test and setting of voting systems prior to election day. (Comments Received)

**PUBLIC PROTECTION CABINET**

**Department of Housing, Buildings, and Construction  
Division of Building Code Enforcement**

**Kentucky Building Code**

815 KAR 7:120 & E. Kentucky Building Code. ("E" expires 3/30/10) (Comments Received)

815 KAR 7:125. Kentucky Residential Code. (Comments Received)

**Division of Plumbing**

**Plumbing**

815 KAR 20:050 & E. Installation permits. ("E" expires 3/30/10) (Comments Received)

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Office of Health Policy**

**Certificate of Need**

900 KAR 6:125. Certificate of Need annual surveys, and registration requirements for new magnetic resonance imaging units. (Deferred from August) (Withdrawn by Agency, 11/13/2009)

**ADMINISTRATIVE REGULATION REVIEW PROCEDURE - OVERVIEW**  
(See KRS Chapter 13A for specific provisions)

**Filing and Publication**

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

**Public Hearing and Public Comment Period**

The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by phone and letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

A transcript of the hearing is not required unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

**Review Procedure**

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.

## EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, NOVEMBER 15, 2009

STATEMENT OF EMERGENCY  
103 KAR 5:180E

This emergency administrative regulation is being promulgated in order to provide Kentucky taxpayers the forms and information necessary to comply with Kentucky tax laws. This administrative regulation must be filed as soon as possible in order to incorporate by reference such tax forms and instructions as may be needed by taxpayers and their representatives to comply with Kentucky tax laws. An ordinary administrative regulation is not sufficient, because the public relies on these forms and instructions in order to comply with the new requirements relating to the sale of certificates of delinquency. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor  
THOMAS B. MILLER, Commissioner

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
Office of Property Valuation  
(New Emergency Administrative Regulation)

## 103 KAR 5:180E. Procedures for Sale of Certificates of Delinquency by County Clerks.

RELATES TO KRS 134.128  
STATUTORY AUTHORITY. KRS 134.128(2)  
EFFECTIVE November 13, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.128(2) requires the Department of Revenue to promulgate administrative regulations to establish a process for the purchase and sale of certificates of delinquency to third parties. In compliance with this subsection, this new administrative regulation establishes a statewide schedule for the sale of certificates, prohibits payment of certificates by a third party prior to the sales, prohibits payment of certificates known to be involved in litigation or for which a payment agreement has been agreed to, establishes a process for determining the order in which third-parties select certificates for purchase, requires prior registration with the county clerk, requires review of the qualifications of the registered purchasers by the county clerk or the Department of Revenue, establishes deposit requirements for purchaser, establishes a registration fee for purchasers, and establishes payment methods and requirements.

Section 1. Definitions. (1) "Clerks fees" means any fee required to be collected by a County Clerk for the filing, recording, release, processing, or other handling of a certificate of delinquency or a lien created by a certificate of delinquency.

(2) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, twenty-five (25) percent or more of a class of voting securities or voting interests of a registrant or applicant, or a person in control of a registrant or applicant;

(b) The power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a registrant or applicant;

(c) The power to exercise influence, directly or indirectly, over the management or policies of a registrant or applicant,

(d) Holding the position of an officer, director, general partner, or managing member of the registrant or the applicant or in a position of similar status or performing similar duties and functions of the registrant or the applicant; or

(e) Being entitled to receive twenty-five (25) percent or more of the profits from the registrant or applicant.

(3) "Current certificate of delinquency" means a certificate of delinquency which relates to the most recent tax year and which has not been offered in a prior year's county clerk's sale.

(4) "Department" means the Kentucky Department of Revenue.

(5) "Person" means any individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government and any subdivision, agency or instrumentality thereof, or any other legal or commercial entity.

(6) "Priority Certificate of Delinquency" means a current certificate of delinquency which relates to a property on which a potential purchaser already owns a prior year certificate of delinquency.

(7) "Protected Certificate of Delinquency" means a certificate of delinquency which is:

(a) Currently involved in litigation;

(b) Part of an ongoing bankruptcy proceeding of which the County Clerk has received actual notice; or

(c) The subject of an agreed payment plan in good standing

(8) "Related entities" and "related interests" means a relationship between two persons in which a person:

(a) Can exercise control or significant influence over another person;

(b) Is related by blood, adoption, or marriage to another person;

(c) Controls or is controlled by another person; or

(d) Is an agent or affiliate of another person.

(9) "Sale" means the annual bulk sale by the county clerk of certificates of delinquency to third party purchasers.

Section 2. Establishing Sale Date. (1) The Department of Revenue shall develop a preliminary statewide schedule for certificate of delinquency sales and shall notify each county clerk on or before May 1 of each year of the proposed date of the county's sale. A county clerk may, within five (5) business days of notification of the preliminary schedule, make a written request to the department to change the proposed sale date for his or her county. Date changes shall be made solely in the discretion of the department. Any adjustments shall be made after consultation with the county clerk and shall be completed on or before May 15 of the/that same year. The department shall publish the final sale schedule as soon as practicable after May 15 of each year.

(2) The county clerk shall notify the county attorney of the sale date as soon as practicable after May 15 of each year. No later than ten (10) days prior to the sale date the county attorney shall provide the county clerk a list of all protected certificates of delinquency. No certificate of delinquency included on the protected list shall be sold at the county clerk's sale.

(3) Except as provided in KRS 134.127, the county clerk shall not assign any current certificate of delinquency prior to the sale.

Section 3. Purchaser's Registration with the County Clerk. (1) A third party purchaser shall register with the county clerk prior to participating in the county's sale. A new registration shall be required for each year's sale.

(2) The county clerk shall establish a registration deadline at least ten (10) but no more than twenty-one (21) days prior to the county's sale. The registration deadline shall be included in all advertisements required by KRS 134.128(5).

(3) A third party purchaser's registration shall include:

(a) The purchaser's name, physical address, mailing address and phone number;

(b) The purchaser's DOR registration number as required by 103 KAR 5:190; and

(c) A list of the priority certificates of delinquency the purchaser intends to purchase. This list shall be clearly marked and shall include the total amount due for all priority certificates of delinquency listed and the following information for each priority certificate of delinquency listed:

1. The current year's tax bill number;

2. The taxpayer name;

3. The amount due on the current certificate of delinquency;

4. The prior year certificate of delinquency's tax bill number;

5. The prior year certificate of delinquency's tax year;

6. The book and page numbers where the prior year certificate of delinquency is filed, if applicable;

7. The account or parcel identification number if the county uses such a number to identify specific properties; and

8. If requested by the county clerk, a copy of the prior year certificate of delinquency.

(d) A list of the current certificates of delinquency the purchaser intends to purchase. This list shall be clearly marked and shall include the total amount due for all certificates of delinquency listed and the following information for each certificate of delinquency listed;

1. The taxpayer name;
2. The amount due on the certificate of delinquency;
3. Lists shall be provided in the format and order required by the county clerk.

(e) the following sworn statement, "I hereby certify that I am not participating in this sale in conjunction with any related person or related entity to obtain any advantage over other potential purchasers at the sale."

(f) the deposit required by the clerk pursuant to Section 4 of this administrative regulation, and

(g) Payment of the registration fee of five (5) dollars for each certificate of delinquency included on the purchaser's list of priority certificates of delinquency and ten (10) dollars for each certificate of delinquency included on the purchaser's list of current certificates of delinquency. The total registration fee shall not exceed \$250.

(4) Prior to the sale, the county clerk shall:

(a) Review each registration and confirm that each registrant has complied with KRS 134.129 and that no related entities or related interests are participating or attempting to participate in the sale in a manner designed to subvert the fairness of the sale or to deprive other participants from an equitable opportunity to purchase certificates of delinquency at the sale. If the clerk determines that a purchaser has violated or has attempted to violate this section, the clerk shall notify the county attorney and the Department of Revenue of the violation or attempted violation;

(b) Review all the lists of priority certificates of delinquency for purchase submitted by purchasers to verify that the registrant has a priority right to purchase the listed certificates of delinquency; and

(c) Review the submitted priority purchase lists to identify multiple purchasers interested in the certificates of delinquency on the same property and, based upon the information submitted, determine the registrant that holds the prior year claim for the most recent tax year.

Section 4. Deposit Requirement. (1) A purchaser shall deposit funds with the County Clerk at the time of registration in the following amounts:

(a) 100% of the value of each certificate of delinquency included on the purchaser's list of priority certificates of delinquency;

(b) All clerk's fees associated with each certificate of delinquency included on the purchaser's list of priority certificates of delinquency;

(c) An amount determined by the county clerk, not to exceed twenty-five (25) percent of the value of each certificate of delinquency included on the purchaser's list of current certificates of delinquency. A purchaser shall not be required to pay an additional deposit if the certificate of delinquency is included on both lists, and if both lists clearly indicate that the certificate is included on both lists. A purchaser may deposit more than the minimum amount required by the county clerk.

(2) The county clerk may apply the deposit to payment of any certificate of delinquency purchased at the sale.

(3) The county clerk shall refund any unused portion of the deposit to the purchaser as soon as practicable after the completion of the sale.

(4) Payment of the deposit shall be made in a form acceptable to the county clerk.

Section 5. Payment. (1) Payment of any outstanding balance, after application of all deposits, shall be made at a time determined by the county clerk, but no later than ten (10) business days after the sale. The total amount due shall include all clerk's fees for all certificates of delinquency purchased at the sale.

(2) Payment shall be made in a form acceptable to the county clerk. The county clerk shall include a list of the acceptable forms of payment in all advertisements for the sale.

(3) If full payment is not made for the certificates of delinquency at the time designated by the county clerk, the county clerk shall not assign any certificate of delinquency for which full payment has not been received and such certificates of delinquency shall be available for payment pursuant to KRS 134.127(1)(b). The county clerk shall have discretion as to how to allocate partial payments. If the purchaser's failure to make payment results in additional cost or expense to the county clerk, the clerk may forfeit the purchaser's deposit to cover those additional costs and expenses.

Section 6. Conduct of the Sale. (1) The county clerk may sell the requested priority certificates of delinquency to the purchasers who submitted a list prior to the sale at the beginning of the sale, or as soon as practicable after the sale. The purchaser holding a certificate of delinquency from the most recent tax year shall have priority. If a purchaser holding a certificate of delinquency from the most recent tax year declines to purchase the priority certificate of delinquency, the purchaser holding a prior certificate of delinquency from the next most recent year shall be allowed to purchase the certificate of delinquency if included on their list of priority certificates of delinquency.

(2) The remaining certificates of delinquency shall be sold in lots. The order of selection of lots by registered purchasers shall be determined by a random drawing on the day of the sale. The purchaser who draws the lowest number during the random drawing shall have the first turn to choose a lot for purchase. Thereafter, purchasers shall select lots to purchase in order based on the random drawing from lowest to highest. Purchasers who are not present for the random drawing shall be placed at the bottom of the selection list behind the purchasers who were present for the random drawing.

(3) The remaining certificates of delinquency shall be sold in lot sizes as follows:

(a) In counties with 500 or fewer certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of up to five (5);

(b) In counties with more than 500 and less than 1,000 certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of up to ten (10);

(c) In counties with at least 1,000 and not more than 2,500 certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of up to twenty-five (25);

(d) In counties with at least 2,500 and not more than 7,500 certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of up to fifty (50);

(e) In counties with more than 7,500 certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of no more than fifty (50) for the first four (4) rounds, and, for all subsequent rounds, may be sold in lots not to exceed two (2) percent of the total number of current certificates of delinquency included in the pool for the sale,

(f) Notwithstanding the lot sizes established by paragraphs (a) through (e) of this subsection, if, for any round of a sale, there are more certificates of delinquency to be sold than purchasers participating in the sale, the lot size used for that round shall not create fewer lots than the number of purchasers participating.

(5) The county clerk may set a reasonable time limit for purchasers to make their selections.

(6) A purchaser may withdraw from the sale at any time prior to completion of the sale. If a purchaser withdraws from the sale, he or she may not make any further purchases in any later round of the sale. No other purchaser may take the place of the withdrawing purchaser.

(7) A purchaser may purchase less than a full lot of certificates of delinquency. If a purchaser purchases less than a full lot, the purchaser shall be considered to have withdrawn from the sale after the partial lot purchase.

(8) The county clerk shall apply the purchaser's deposit to the total amount due for the certificates of delinquency purchased. The purchaser shall pay any additional funds required on or before the payment deadline established by the county clerk pursuant to Sec-

tion 4 of this administrative regulation. The total amount due shall include all clerk's fees for all certificates of delinquency purchased at the sale. Any amount of deposit remaining after the sale shall be refunded to the purchaser.

(9) Purchasers shall only purchase those certificates of delinquency listed on the registration required by Section 3 of this administrative regulation.

(10) Any questions or controversies relating to the sale shall be addressed by the county clerk.

Section 7. Department of Revenue Oversight. (1) The Commissioner of the Department of Revenue or his or her duly appointed representative shall have access to all sales and shall be permitted to review or audit any and all records relating to the sale of certificates of delinquency.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and procedures for the bulk sale of certificates of delinquency to third party purchasers by the county clerks. It set scheduling, registration, deposit and payment requirements for participants in the sale and sets the procedures to be used during the sale

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures to be used by county clerks for the sale of certificates of delinquency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 134.128(2) requires the Department of Revenue to promulgate administrative regulations to establish procedures for these sales and standards for registration, deposits, payment, scheduling and conduct of the sales.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide county clerks the necessary standards and procedures to conduct these sales.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Not applicable.

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this regulation:

(c) How the amendment conforms to the content of the authorizing statute:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all 120 county clerks and all 120 county attorneys. In addition, it will affect all off the third-party purchasers who purchase certificates of delinquency.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: These sales are currently conducted by sheriffs. HB 262 shifted the duty to conduct these sales to the county clerks. This administrative regulation sets the specific procedures and standards for the clerks to implement as required by KRS 134.128(2). KRS 124.128(2) requires county attorneys to provide information regarding "protected" certificates of delinquency to county clerks. This administrative regulation sets the deadline before which the county attorneys must provide this information to the

county clerks. Finally, this administrative regulations sets the registration, registration fee, deposit and payment requirements which apply to participants in these sales.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): County clerks: unknown. County attorneys: minimal cost to identify certificates of delinquency involved in litigation or in payment agreements. Participants: Registration fee of \$250 per county.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each will benefit from a fair and equitable process for sale of certificates designed to insure that all participants have an equal chance to purchase certificates.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Minimal

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registration fees set in the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: A registration fee of \$250 per county.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes an registration fee of \$250 per county.

(9) TIERING: Is tiering applied? Tiering is applied. Holders of prior certificates of delinquency are give priority to purchase later certificates on the same property. This is necessary to protect the holder of the certificates and to prevent the property holder from having to contact and pay multiple certificate-holders.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue, all county clerks, and all county attorneys will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 134.128(2)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Specific dollar amounts cannot be determined for the increase in receipts that will be generated because of this administrative regulation, but the registration fees for the sales should generate sufficient revenue to offset the cost of holding the sales.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Specific dollar amounts cannot be determined, however, the impact should be substantially similar to that experienced in the first year.

(c) How much will it cost to administer this program for the first year? There will be an additional cost to the county clerks to hold these sales; however, it is anticipated that these costs will be offset by the registration fees to be paid by the participants.

(d) How much will it cost to administer this program for subsequent years? There will be an additional cost to the county clerks to hold these sales, however, it is anticipated that these costs will be offset by the registration fees to be paid by the participants.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

**STATEMENT OF EMERGENCY**  
**103 KAR 5:190E**

This emergency administrative regulation is being promulgated in order to provide Kentucky taxpayers the forms and information necessary to comply with Kentucky tax laws. This administrative regulation must be filed as soon as possible in order to incorporate by reference such tax forms and instructions as may be needed by taxpayers and their representatives to comply with Kentucky tax laws. An ordinary administrative regulation is not sufficient, because the public relies on these forms and instructions in order to comply with the new requirements relating to the sale of certificates of delinquency. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor  
THOMAS B. MILLER, Commissioner

**FINANCE AND ADMINISTRATION CABINET**  
**Department of Revenue**  
**Office of Property Valuation**  
**(New Emergency Administrative Regulation)**

**103 KAR 5:190E. State registration requirements and application process for purchasing certificates of delinquency; fees; and definitions for related entities and related interests.**

RELATES TO: KRS 134.128, 134.129

STATUTORY AUTHORITY: KRS 134.129(3), 134.128(2)(d)3

EFFECTIVE DATE: November 13, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.129(2) requires a person to hold a certificate of registration from the Department of Revenue prior to the payment of any certificate of delinquency that results in the person owning more than five (5) certificates of delinquency statewide, more than three (3) certificates of delinquency in any county, or investing more than \$10,000 in the payment of certificates of delinquency statewide in a calendar year. KRS 134.129(3) authorizes the Department of Revenue to promulgate administrative regulations to establish registration requirements, an application process, and an imposition of an administrative fee to offset the cost of processing and reviewing the application for a certificate of registration. KRS 134.128(2)(d)3 requires the department to define "related entities" and "related interests" for the purpose of regulating the sale of certificates of delinquency. This administrative regulation establishes the registration requirements and application process for persons to hold a certificate of registration prior to the payment of a certificate of delinquency. This administrative regulation establishes the administrative fee that may be charged to offset the cost of processing and reviewing the application for certificate of registration. This administrative regulation also defines "related entities" and "related interests".

Section 1. Definitions. (1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries controls, is controlled by, or is under the common control with, another person.

(2) "Agent" means a person by agreement with a registrant to act on behalf of a registrant.

(3) "Applicant" means a person filing a complete application.

(4) "Application" means an Application for Certificate of Registration to Purchase Certificates of Delinquency, Form number 62A370A.

(5) "Commissioner" means the Commissioner of the Department, or his or her designee.

(6) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, twenty-five (25) percent or more of a class of voting securities or voting interests of a registrant or applicant, or person in control of a registrant or applicant;

(b) The power to elect a majority of executive officers, managers, directors, trustees, or other person exercising managerial authority of a registrant or applicant;

(c) The power to exercise influence, directly or indirectly, over the management or policies of a registrant or applicant;

(d) Holding the position of an officer, director, general partner, or managing member of the registrant or the applicant or in a position of similar status or performing similar duties and functions of the registrant or the applicant; or

(e) Being entitled to receive twenty-five (25) percent or more of the profits from the registrant or applicant.

(7) "Department" means the Kentucky Department of Revenue

(8) "Person" means any individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government and any subdivision, agency or instrumentality thereof, and any other legal or commercial entity.

(10) "Registrant" means a person registered to purchase a certificate of delinquency.

(11) "Related entities" and "Related interests" means a relationship between two persons in which a person:

(a) Can exercise control or significant influence over another person;

(b) Is related by blood, adoption, or marriage to another person;

(c) Controls or is controlled by another person; or

(d) Is an agent or affiliate of another person.

Section 2. Registration Requirement. (1) All persons who purchase or intend to purchase any certificate of delinquency that results in the person owning more than five (5) certificates of delinquency statewide, more than three (3) certificates of delinquency in any county, or investing more than \$10,000 in the payment of certificate of delinquency statewide in a calendar year, shall file an application with the department, at least sixty (60) days prior to the purchase of any certificate of delinquency that would require registration under KRS 134.129 and this administrative regulation. The application shall be notarized.

(2) In addition to the requirements established by KRS 134.129(4), which will be considered by the department in reviewing and evaluating an application, the department shall consider the following criteria and information in its review and evaluation:

(a) Whether the person is a related entity or has related interests with another person that is registered or intends to register with the department;

(b) Whether persons with related interests or related entities to the applicant meet the criteria established by KRS 134.129(4) and this administrative regulation;

(c) If the applicant is not an individual, whether the applicant is in good standing in the state of incorporation or formation;

(d) If required by law to register to conduct business in the Commonwealth, whether the applicant is in good standing with the Kentucky Secretary of State.

(3) The department may consider additional criteria and request additional information from an applicant as part of the review process.

(4) The commissioner may waive any requirement of the application or permit an applicant to submit substituted information in lieu of the information required by this section or application.

(5) Every nonindividual applicant, at the time of the filing of the application and after a certificate of registration is issued, shall be in good standing in the state of its incorporation or formation

(6) Every applicant shall, at the time of the filing of the application and after a certificate of registration is issued, shall be registered and qualified to do business in this Commonwealth, and be in good standing with the Kentucky Secretary of State.

Section 3. Review of Application. (1) The department may review and investigate any matter related to an application to determine if the applicant meets the requirements of KRS 134.129 and this administrative regulation;

(2) The department shall approve an application and issue a certificate of registration to an applicant if he, she, or it meets the requirements of KRS 134.129 and this administrative regulation.

(3) The department may deny the application and refuse to issue a certificate of registration if the applicant does not meet one or more of the requirements as set forth in KRS 134.129 and this administrative regulation.

(4) All certificates of registration shall expire on December 31 in the calendar year in which they are issued regardless of the date of issuance.

(5) A certificate of registration shall be not be transferred or assigned.

(6) The department may deem an application abandoned when the applicant fails to file a complete application, fails to timely provide any information required by this administrative regulation or requested by the department, or fails to pay the processing fee required by this administrative regulation.

#### Section 4. Denial, Suspension, or Revocation of Registration.

(1) The department may revoke, suspend, refuse to issue a registration, or accept surrender of a registration in lieu of revocation or suspension if the department finds that the person, applicant, or registrant:

(a) Failed to comply with the requirements of KRS 134.129 and this administrative regulation;

(b) Does not conduct his, her, or its business in accordance with the law;

(c) Is guilty of fraud in connection with any transaction governed by KRS 134.129 and this administrative regulation, or is the subject of an administrative cease and desist order or similar order, or permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act;

(d) Has made any misrepresentations or false statements to or concealed any essential or material fact or has suppressed or withheld from the department any information and which, if it had been properly and timely submitted or disclosed to the department, would have rendered the person ineligible to be registered under this administrative regulation;

(e) Has refused to permit an examination or investigation by the department of his or her books and affairs or has refused within a reasonable time to furnish any information or make any disclosure that may be required by the department under the provisions of this administrative regulation;

(f) Has abandoned an application by failing to provide the department any information required or requested by the department under this administrative regulation to complete an application;

(g) Has employed or contracted with a person who has had an application denied or certificate of registration revoked or suspended under this administrative regulation;

(h) Has failed to pay any required fee under this administrative regulation;

(i) Has failed to pay any state tax or to comply with any administrative or court order directing the payment of state tax; or

(j) Has violated any provision under this administrative regulation or order issued by the commissioner.

(2) Any person whose registration has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension is prohibited from participating in any business activity of a registrant under this administrative regulation and from engaging in any business activity on the premises where a registrant under this administrative regulation is conducting its business.

(3) Any person who has had his or her application denied by the department may not file another application until January 1 of the year following the denial.

(4) Any person who has had his or her certificate of registration revoked twice may be permanently barred from applying for a certificate of registration.

(5) The commissioner may enter into a consent order with another person at any time for the purpose of resolving a matter arising under this administrative regulation.

(6) Any consent order that the commissioner enters into to resolve a matter arising under this administrative regulation shall be deemed an administrative action and a public record.

(7) The commissioner may stay, suspend, or postpone the

effective date of an order issued under this administrative regulation, pending the administrative proceeding and the issuance of a final order resulting from the proceeding, upon written request by the affected person or licensee.

(8) The surrender or expiration of a registration shall not affect the registrant's civil or criminal liability for acts committed prior to the surrender or expiration. The surrender or expiration of a registration shall not affect a proceeding to revoke or suspend a registration.

Section 5. Notice and Right of Appeal. (1) The department shall provide written notice to an applicant whenever an application is denied or to a registrant whenever a certificate of registration is suspended or revoked. The notice shall be sent by certified mail or personal delivery to the last known address of the applicant or registrant, as provided by the applicant or registrant, according to the records of the department. An applicant or registrant is deemed to have received a copy of the written notice three (3) business days following the mailing thereof.

(2) Any applicant or registrant who has had his or her application denied or registration suspended or revoked may file a written request for a hearing.

(3) A written request for a hearing shall be filed with the department within (10) days of the date of the denial, suspension, or revocation; shall be made in good faith; and shall briefly state the reason or reasons the person is aggrieved, together with the grounds to be relied upon as a basis for the relief to be sought at the hearing.

(4) A hearing shall be held within ten (10) days of the receipt of the written request for a hearing unless the parties agree otherwise.

(5) The commissioner shall appoint a hearing officer to preside over the matter. The hearing officer shall issue a recommended order within twenty-one (21) days of the hearing.

(6) The commissioner shall issue a final order within five (5) days of the issuance of the recommended order by hearing officer.

(7) Any person aggrieved by the decision of the commissioner may file an appeal to the Franklin Circuit Court within thirty (30) days of the issuance of the final order.

Section 6. Sharing of Information. Notwithstanding any provision to the contrary, the department may furnish to and exchange any information related to this administration regulation with officials of other properly authorized city, county, state or federal governmental authorities for official use only and on a confidential basis.

Section 7. Fees. Each application shall be accompanied by a nonrefundable processing fee in the amount of \$250.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Certificate of Registration to Purchase Certificates of Delinquency", November 2009; and

(b) "Certificate of Registration", November 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins, Policy Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the registration requirements and appli-

cation process for persons to hold a certificate of registration prior to the payment of a certificate of delinquency. This administrative regulation establishes the administrative fee that may be charged to offset the cost of processing and reviewing the application for certificate of registration. This administrative regulation also defines "related entities" and "related interests".

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the state application and registration process for persons that intend to own more than 5 certificates of delinquency statewide, more than 3 certificates of delinquency in any county, or invest more than \$10,000 in the payment of certificates of delinquency statewide in a calendar year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 134.129(3) authorizes the Department of Revenue to promulgate administrative regulations to establish registration requirements, an application process, and an imposition of an administrative fee to offset the cost of processing and reviewing the application for a certificate of registration. KRS 134.128(2)(d)3 requires the department to define "related entities" and "related interests" for the purpose of regulating the sale of certificates of delinquency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a purchaser of certificate of delinquencies the information necessary to file an application for a certificate of registration.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this regulation:

(c) How the amendment conforms to the content of the authorizing statute:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 5 to 10 individual and business purchasers of delinquent real property tax bills.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment. Currently, registration is not required with the state. Any person that intends on owning more than 5 certificates of delinquency statewide, more than 3 certificates of delinquency in any county, or investing more than \$10,000 in the payment of certificates of delinquency statewide in a calendar year will not be able to purchase any certificate of delinquency unless they complete an application and approved to hold a certificate of registration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Annual application and processing fee of \$250 will be required by each individual or business seeking a certificate of registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Individuals and entities whose applications are approved will be issued a certificate of registration which will allow them to purchase certificate of delinquencies.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Minimal

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation will be done with existing personnel.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An annual application and processing fee of \$250 is established that will used to offset any anticipated increase in costs in the administration and

enforcement of this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes an annual processing and application fee of \$250.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation establishes the registration requirements and application process for persons to hold a certificate of registration prior to the payment of a certificate of delinquency. This is necessary for all individuals and companies intend on owning more than 5 certificates of delinquency statewide, more than 3 certificates of delinquency in any county, or investing more than \$10,000 in the payment of certificates of delinquency statewide in a calendar year.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 134.129(3), 134.128(2)(d)3.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

Specific dollar amounts cannot be determined for the increase in receipts that will be generated because of this administrative regulation, but there will be an acceleration of receipts from delinquent real property taxes at both the state and local levels due to the third-party purchase of certificate of delinquencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Specific dollar amounts cannot be determined for the increase in receipts that will be generated because of this administrative regulation, but there will be an acceleration of receipts from delinquent real property taxes at both the state and local levels due to the third-party purchase of certificate of delinquencies.

(c) How much will it cost to administer this program for the first year? There will be an additional cost in the processing and review of each application but those costs are anticipated to be offset by the application and processing fee.

(d) How much will it cost to administer this program for subsequent years? There will be an additional cost in the processing and review of each application but those costs are anticipated to be offset by the application and processing fee.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 301 KAR 2:221E

This emergency administrative regulation establishes season dates, limits, shooting hours, and other requirements for hunting waterfowl. Waterfowl hunting season frameworks are set annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons shall do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Con-



sequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the waterfowl season. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation filed with the Regulations Compiler by November 15, 2009.

STEVEN BESHEAR, Governor  
BENJY KINMAN, Deputy Commissioner  
For JONATHAN GASSETT, Commissioner

**TOURISM, ARTS AND HERITAGE CABINET**  
**Department of Fish and Wildlife Resources**  
**(Emergency Amendment)**

**301 KAR 2:221E. Waterfowl seasons and limits.**

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), [460-600(4)], 150.990[-50 C.F.R. Parts 20, 21]

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. [Parts] 20, 21

EFFECTIVE: November 3, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions (1) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(2) "Light Goose" means a snow goose or Ross's goose.

(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60

(4) "Waterfowl" is defined in KRS 150.010(40).

Section 2. (1) Except as authorized by 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Season dates. (1) Duck, coot, and merganser:

(a) Beginning on Thanksgiving Day for four (4) consecutive days; and

(b) For fifty-six (56) consecutive days ending on the last Sunday in January of the following year.

(2) Canada goose:

(a) Eastern, Pennynle, and Western Goose Zones, beginning on November 23 for seventy (70) consecutive days.

(b) Northeast Goose Zone:

1. Beginning on the Saturday following Christmas for nine (9) consecutive days; and

2. Beginning on January 19 for thirteen (13) consecutive days.

(3) White-fronted and brant geese, beginning on November 23 for seventy (70) consecutive days.

(4) Light goose:

(a) Beginning on November 23 for seventy (70) consecutive days; and

(b) Light Goose Conservation Order season:

1. Western Duck Zone: from February 1 through 5 and February 8 through March 31.

2. Eastern Duck Zone from February 1 through March 31.

(5) A person shall not hunt a light or dark goose in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4 In the Ballard Reporting Area that is established in 301 KAR 2:224:

(1) A person hunting waterfowl shall:

(a) Hunt from a blind unless hunting in flooded, standing timber;

(b) Not hunt from or establish a blind:

1. Within 100 yards of another blind; or

2. Within fifty (50) yards of a property line; and

(c) Not possess more than one (1) shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in 301 KAR 2:221, is the only waterfowl season open, excluding falconry seasons.

Section 5 Bag and Possession Limits (1) Ducks: The daily limit shall be six (6), that shall not include more than:

a. Four (4) mallards;

b. One (1) hen mallard;

c. Three (3) wood ducks;

d. One (1) black duck;

e. Two (2) redheads;

f. One (1) pintail;

g. Two (2) scaup;

h. One (1) mottled duck; or

i. One (1) canvasback.

(2) Coot: Daily limit fifteen (15).

(3) Merganser: Daily limit five (5), which shall not include more than two (2) hooded mergansers.

(4) Dark goose: Daily limit six (6), that shall not include more than:

(a) Two (2) Canada geese;

(b) Two (2) white-fronted geese; or

(c) Two (2) brants.

(5) Light goose: Daily limit twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.

(6) The possession limit shall be double the daily limit, except that there shall not be a light goose possession limit.

Section 6 Shooting Hours A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) 2 p.m. in the Northeast Goose Zone during a Canada goose season;

(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222; or

(3) One-half (1/2) hour after sunset if hunting light goose during the Light Goose Conservation Order season.

Section 7 Falconry Waterfowl Season and Limits (1) Season dates:

(a) Light goose: November 5 through January 31;

(b) Light Goose Conservation Order season:

1. Western Duck Zone: from February 1 through February 5 and February 8 [9] through March 31.

2. Remainder of state: from February 1 through March 31; and

(c) Other waterfowl: November 5 through January 31.

(2) Daily limit: three (3) waterfowl, except that there shall not be a limit on light goose during the Light Goose Conservation Order season.

(3) Possession limit: six (6) waterfowl, except that there shall not be a possession limit on light goose during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order season. (1) A person hunting light goose during the Light Goose Conservation Order season shall first obtain a free permit from the department by contacting the Ballard WMA office.

(2) A person hunting light goose during the Light Goose Conservation Order season shall submit a Light Goose Conservation Order report to the department by April 10 [and 460-600(4) authorize the department to establish waterfowl season dates and limits. This administrative regulation establishes the limits and dates within federal waterfowl hunting frameworks established by 50 C.F.R. Part 20, EO 2008-516, effective June 16, 2008 reorganizes and

renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Conservation Snow Goose Order" is defined by 50 C.F.R. Parts 20 and 21.

(2) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(3) "Snow goose" means a snow goose or Ross' goose.

(4) "Waterfowl" is defined in KRS 150.010(40).

Section 2. (1) Except as authorized by 301-KAR-2-222, 301-KAR-2-225, or 301-KAR-2-226, a person shall not take waterfowl except on the dates and within the limits prescribed by this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are established in 301-KAR-2-224.

Section 3. Gun and Archery Season Dates and Bag Limits for Duck, Coot, and Merganser. (1) Season dates:

(a) All ducks except for canvasback, November 27 through January 25.

(b) The season on canvasback shall be closed.

(2) The gun and archery daily bag limit shall be:

(a) Six (6) ducks, which shall not include more than:

1. Four (4) mallards, which shall not include more than one (1) hen mallard;

2. Three (3) wood ducks;

3. One (1) black duck;

4. Two (2) redheads;

5. One (1) pintail;

6. Scaup;

a. One (1) scaup from November 27 to January 5;

b. Two (2) scaup from January 6 to January 25;

7. Three (3) mottled ducks.

(b) Fifteen (15) coots.

(c) Five (5) mergansers, which shall not include more than two (2) hooded mergansers.

(3) The possession limit shall be double the daily bag limit.

Section 4. Gun and Archery Seasons Dates and Bag Limits for Goose. (1) White-fronted goose and brant season dates: November 23 through January 31.

(2) Snow goose season dates:

(a) Regular season: November 23 through January 31;

(b) Conservation Snow Goose Order;

1. The Western Duck Zone: February 1 through February 6 and February 9 through March 31.

2. Rest of state: February 1 to March 31.

(3) Canada goose season dates shall be from the starting date listed below through January 31.

(a) The Eastern Goose, Pennyroyal Coalfield, West Central Kentucky, and Western Goose Zones shall be open on November 23; and

(b) There shall be a split season in the northeast Kentucky goose zone:

1. December 27 through January 4; and

2. January 10 to January 31.

(4) A person shall not goose hunt in:

(a) The areas of Laurel River Lake as posted by sign; and

(b) Cave Run Lake and the public land inside a boundary formed by Highways 801, 1274, 36, 211, US 60 and Highway 826.

(5) The gun and archery daily bag limit shall be:

(a) Six (6) dark geese, to include no more than:

1. Two (2) Canada geese;

2. Two (2) white-fronted geese; and

3. Two (2) brant.

(b) Twenty (20) snow geese; except there shall be no daily limit on snow geese during the Conservation Snow Goose Order.

(6) The possession limit shall be double the daily bag limit, except that there shall not be a possession limit on snow geese.

Section 5. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) 2 p.m. in the Northeast Kentucky Hunt Zone during a Can-

ada goose season;

(2) Sunset in the remainder of the state, except as specified in 301-KAR-2-222; or

(3) One-half (1/2) hour after sunset while hunting snow geese during the Conservation Snow Goose Order.

Section 6. Falconry-Waterfowl Season and Limits. (1) Season dates:

(a) Snow geese: November 5 through January 31.

(b) Conservation Snow Goose Order:

1. Western Duck Zone: February 1 through February 6 and February 9 through March 31.

2. Remainder of state: February 1 through March 31.

(c) Canada Goose season: November 5 through February 1.

(d) Other waterfowl: November 5 through February 1.

(2) Daily limit: three (3) waterfowl, except that there shall be no limit on snow geese during the Conservation Snow Goose Order.

(3) Possession limit: six (6) waterfowl, except that there shall be no limit on snow geese during the Conservation Snow Goose Order.

Section 7. Permit for Conservation Snow Goose Order. (1) A person hunting snow geese during the Conservation Snow Goose Order shall first obtain a free permit from the department by contacting the Ballard WMA office at (270) 224-2244.

(2) A hunter during the Conservation Snow Goose Order shall submit a Conservation Snow Goose Order report by April 10.]

BENJY KINMAN, Deputy Commissioner

For JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: October 26, 2009

FILED WITH LRC: November 3, 2009 1 p.m.

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2009-10 waterfowl hunting seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates and bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing waterfowl hunting seasons and area-specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with national and international management goals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: Each fall the USFWS issues a federal mandate establishing the framework for waterfowl hunting seasons. This amendment reflects the federal mandate regulations for waterfowl hunting under guidance of the Migratory Bird Treaty Act. Changes in the duck season dates are the result of a calendar shift. Federal frameworks permit a maximum 60-day season in the Mississippi Flyway. Kentucky will split duck season in 2009, using four days to accommodate hunters during the Thanksgiving weekend with the remaining 56 days open through the last Sunday in January as specified in the federal frameworks. In 2009, the season on can-

vasback ducks will once again be open, and the bag limit on scaup ducks will be two (2) birds per day for the entire duck season.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for waterfowl and migratory game birds.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's Web Site. Hunters will have to review the hunting guide or website for the updated information to hunt legally during the specified season.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt waterfowl in the state.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations to restrict the methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. States must adhere to 50 C.F.R. Parts 20 and 21 that establishes the U.S. Fish and Wildlife Service's Federal migratory bird hunting frame-

works.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory limits that a state may permit. States are permitted to be more restrictive but not more liberal in their respective regulations. State waterfowl population migration and winter management objectives necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's waterfowl hunters. The season on snow geese is shorter than the federal framework because migration patterns for this species result in a paucity of birds early in the federal framework. The Canada goose season in the Northeast Goose Zone is shorter than is permitted in the rest of the state because of the desire to maintain a huntable population in that region of the state.

#### STATEMENT OF EMERGENCY 301 KAR 2:222E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for hunting waterfowl on public lands. Waterfowl hunting season frameworks are set annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons shall do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and pub-

lic involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the waterfowl season. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation filed with the Regulations Compiler by November 15, 2009.

STEVEN BESHEAR, Governor  
BENJY KINMAN, Deputy Commissioner  
For JONATHAN GASSETT, Commissioner

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(Emergency Amendment)**

**301 KAR 2:222E. Waterfowl hunting requirements on public lands.**

RELATES TO: KRS 150.010(40), [150.025(1);] 150.305(1), 150.330, 150.340(1), (3), [150.600(1);] 150.990[; 50 C.F.R. Parts 20, 21]

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, [(a), (b), 150.340;] 150.600(1), 50 C.F.R. [Parts] 20, 21

EFFECTIVE: November 3, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes and 150.600(1) authorize the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land establish statewide waterfowl hunting requirements and to specify seasons and other requirements on Wildlife Management Areas and other areas. KRS 150.340 authorizes the department to establish bag limits for waterfowl. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21 into specific restrictions on areas in Kentucky regarding waterfowl requirements to optimize public use within sound waterfowl conservation practices. EO 2008-516, effective June 16, 2008 reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet].

Section 1. Definitions. (1) "Blind" means a concealed enclosure, pit, or boat:

- (a) A concealing enclosure;
- (b) A pit; or
- (c) A boat.

(2) "Blind site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers [identified by the department or approved by the U.S. Army Corps of Engineers where hunting is permitted].

(3) "Department blind" means a permanently fixed blind structure built by the department.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) [(4)] "Party" means a person hunting alone or two (2) to four (4) people who share a blind or blind site.

(6)]:

- (a) A person hunting alone; or
- (b) From two (2) to four (4) persons who share a blind or blind site.

(5) "Permanent blind" means a blind left in place by a waterfowl hunter longer [more] than twenty-four (24) hours.

(7) [(6)] "Regular waterfowl season" means the open waterfowl season that does not include the Light Goose Conservation Order for the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 [late migratory bird hunting seasons referred to in 50 C.F.R. Part 20.

(7) "Statewide waterfowl seasons" means the provisions of this

administrative regulation and of 301 KAR 2:221].

(8) "Waterfowl" is defined in KRS 150.010(40).

(9) "Wildlife Management Area" or "WMA" means a tract of land:

- (a) Controlled by the department through ownership, lease, license, or cooperative agreement; and
- (b) that has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Shot requirements. A person hunting waterfowl [hunter] shall not use or possess [carry] a shotgun shell:

- (1) Longer than three and one-half (3 1/2) inches; or
- (2) Containing [shot]:
  - (a) Lead shot [Made of lead],
  - (b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
  - (c) Shot larger than size "T."

Section 3. [In the Ballard Reporting Area, as described in 301 KAR 2:224:

(1) A waterfowl hunter shall:

(a) Hunt from a blind unless hunting in flooded, standing timber;

(b) Not hunt from or establish a blind:

- 1. Within 100 yards of another blind; or
- 2. Within fifty (50) yards of a property line, and
- (c) Not possess more than one (1) shotgun while in a blind.
- (2) The requirements of subsection (1) of this section shall not apply when the Conservation Snow Goose Order is the only waterfowl season open, excluding falconry seasons.

Section 4. (1) Except as specified in this section or in Section 5 of this administrative regulation, on a Wildlife Management Area:

(a) A person hunting waterfowl [hunter] shall not establish or hunt from:

- 1. A permanent waterfowl blind; or
- 2. A waterfowl blind within 200 yards of:
  - a. Another waterfowl blind; or
  - b. A waterfowl refuge;

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a waterfowl blind; and

(d) A hunter shall remove decoys and personal items [effects from the Wildlife Management Area] daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt [at his or her own risk].

(2) A person wanting [wishing] to establish or use a permanent waterfowl blind or blind site on Lake Barkley [Lake], Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug [Deung] Travis Wildlife Management Areas:

(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner; and

(c) Shall not hold more than one (1) permit per area; and

(d) Shall participate in a drawing for a blind permit on the Barkley, Barren, Green, Paintsville, Sloughs, or Doug [Deung] Travis Wildlife Management Areas:

1. At the time of the drawing, the hunter shall possess a valid hunting license, a Kentucky waterfowl permit and a federal waterfowl permit; and

2. Shall be eighteen (18) years of age or older.

(3) A person who participates in a drawing for a WMA blind permit shall:

(a) Be at least eighteen (18) years of age; and

(b) Possess:

- 1. A valid Kentucky hunting license,
- 2. A Kentucky waterfowl permit; and
- 3. A federal duck stamp.

(4) The holder of a waterfowl blind permit shall:

(a) Construct or establish the [his or her] blind or blind site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind, and

(c) Remove the~~Unless an extension of time is granted, remove his~~ blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department based on weather or water level conflicts.

(5)(4) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served~~first-serve~~ basis.

(6)(5) A waterfowl blind restriction established~~specified~~ in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4 [5-On-a] Wildlife Management Area Requirements.

(1) the regular waterfowl season provisions~~-(1)(a) Statewide waterfowl seasons~~ shall apply, as established in 301 KAR 2:221, except as established~~unless otherwise stated~~ in this section.

(2) The provisions of this section~~(b) If specific hunting dates and times are given in this section, a person shall not hunt waterfowl except on those dates and times~~

(e) Paragraph (b) of this subsection shall not apply to a waterfowl hunting season that opens prior to~~opening before~~ October 15, as established in 301 KAR 2:225.

(3)(2) A person shall not:

(a) Hunt on an area [or portion of an area] marked by a sign as closed to hunting;

(b) Enter an area [or a portion of an area] marked by signs as closed to public access; or

(c) Hunt a species on an area [or a portion of an area] marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

1. The daily bag limit for ducks is greater than three (3); and

2. The daily bag limit for Canada goose is greater than or equal to two (2);

(b) At least one (1) person in a waterfowl blind shall be eighteen (18) years of age or older if hunting in a department waterfowl blind at Ballard or Boatwright WMA.

(5) At Ballard WMA:

(a) The duck, coot, and merganser season shall be December 9 through January 31

(b) The goose season shall be December 9 through January 31.

(c) Youth waterfowl season shall be the first full weekend in February.

(d) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Day, or New Year's Day.

(e) A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 6 of this administrative regulation;

2. Case a gun if using department-supplied transportation to and from a waterfowl blind;

3. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard Wildlife Management Area from October 15 through March 15; and

4. Exit the area by 2 p.m. during the regular waterfowl season, except as authorized by the department.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Day, or New Year's Day;

2. Obtain a daily check-in card by 8 a.m. before entering the area from December 9 through January 31.

3. Check out the same day by:

a. Check station prior to 8 a.m.; or

b. Depositing the check-in card at a department-designated drop point after 8 a.m.

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecu-

tive days on areas of Boatwright WMA that are open to hunting.

(c) A department blind or blind site shall be assigned through a daily drawing through January 31.

(d) A blind or blind site shall be offered to another hunter on a first-come, first-served basis, if the blind or blind site has not been assigned during the daily drawing.

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season.

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or

2. A mobility-impaired hunter may hunt from a boat, and the 200 yard minimum distance restriction, as established in this section, shall not apply to a person assisting a mobility-impaired hunter.

(g) A party shall only hunt waterfowl:

1. From a department blind; or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a blind site in December and January during the regular waterfowl season.

(h) On the Peal unit:

1. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

2. More than four (4) parties shall not hunt at the same time on Fish Lake.

3. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;

4. A party shall not hunt waterfowl except within twenty-five (25) feet of a blind site during December and January.

(i) On the Swan Lake Unit:

1. A person shall not hunt waterfowl from November 26 through December 6;

2. The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and

3. Blind restrictions shall not apply to the Light Goose Conservation Order season.

(7) Lake Barkley WMA

(a) A permanent blind shall only be established within ten (10) yards of a blind site;

(b) Waterfowl refuge areas:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile fifty-one (51), at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile fifty-five and five-tenths (55.5) shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(8) Barren River Lake WMA. A person hunting waterfowl,

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(9) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(10) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15.

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(11) Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(12) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person hunting waterfowl shall exit the area by 2 p.m.

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during waterfowl season, except as authorized by the department.

(c) On Forked Lake, Indian Camp Lake, Fish Lake, Number Four Lake, and Black Lake, all waterfowl hunting after November 1.

1. Shall be from blind sites assigned by a random preseason drawing; and

2. Shall be within ten (10) yards of a blind site, including periods of Mississippi River flooding.

(13) Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site manna;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; and

(d) Within three-quarters (3/4) of a mile from the dam.

(14) Green River Lake WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.,

(15) Kaler Bottoms WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.,

(16) Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys;

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl.

1. Inland from the water's edge of Kentucky Lake or Barkley Lake, or

2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A person hunting waterfowl shall remove decoys and personal items daily.

(17) Obion Creek WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(18) Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15, except for those drawn for a quota deer hunt.

(19) Peabody WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15.

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and

2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(20) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(21) Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.

(c) On the Grassy-Pond Powell's Lake Unit, a person hunting waterfowl:

1. Shall hunt:

a. From a department blind; or

b. From a blind within twenty-five (25) yards of a blind site.

2. Shall remove decoys and personal items from the area on a

daily basis.

(d) On the Jenny Hole-Highlands Creek Unit, a person hunting waterfowl

1. Shall hunt.

a. From a department blind;

b. From a blind within twenty-five (25) yards of a blind site; or

c. From a blind that is no closer than 200 yards of another hunting party.

2. Shall remove decoys and personal items from the area on a daily basis.

(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(f) A person hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from a blind assigned by the department through a drawing as established in Section 6 of this administrative regulation;

2. May occupy a permitted blind if not claimed by the permittee within one (1) hour before sunrise;

3. Shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-five (25) if:

(a) The daily bag limit for ducks is greater than three (3); and

(b) The daily bag limit for Canada goose is greater (less) than or equal to two (2);

4. Shall be accompanied by an adult if under eighteen (18) years of age; and

5. The waterfowl blind for a mobility-impaired person shall be open to the public if the permit holder or another mobility-impaired person has not claimed the blind on that day by one (1) hour before sunrise.

(g) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except for:

1. Waterfowl from November 1 through March 15, and

2. The modern gun deer season.

(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(22) South Shore WMA.

(a) The WMA shall be closed to hunting from November 15 through January 15, except for quota waterfowl hunting and dove hunting.

(b) The quota hunt shall require advance application and selection.

(c) A hunter shall use a department blind.

(d) A department blind shall be allocated by a preseason drawing.

(23) Taylorsville Lake WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(24) Yatesville Lake WMA. The following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(25) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 5. (1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply through the vendor supplied by the department by calling 1-877-598-2401

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt may bring up to three (3) additional hunters.

(3) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota

hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of Barren River, Grayson Lake, Greenbo Lake, Lake Barkley, Lincoln Homestead, Paintsville Lake, Pennynile Lake, and Yatesville Lake State Parks.

(2) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days that the park office is not open.

(3) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(4) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days that the park office is not open.

(5) Statewide waterfowl hunting requirements shall apply.

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts. (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with the youth-mentor hunt.

(3) The date of each hunt shall be published in the annual Waterfowl Hunting Guide.

(4) A youth or mobility-impaired person shall register in advance and carry a department provided postcard notification on the day of the hunt.

(5) A mobility-impaired person shall also submit a mobility-impaired access permit.

(6) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(7) Each youth shall not be accompanied by more than one (1) adult.

(8) One (1) adult may accompany two (2) youths.

(9) A mobility-impaired hunter may be accompanied by no more than one (1) assistant who may also hunt.

(10) A person shall hunt from an established blind and shall not change blinds.

(11) A blind shall not be used by more than four (4) hunters.

(12) A person shall only discharge a firearm from a blind.

(13) A person shall not possess more than fifteen (15) shotshells.

(14) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(15) A person shall encase a firearm if traveling to and from a blind.

(16) Hunting shall end at noon, and hunters shall exit the area by 1 p.m.

(17) All decoys and equipment shall be removed at the end of each day's hunt.

(18) A hunter shall report harvest by depositing a completed hunt permit at the designated location [(3) Wildlife management areas in Ballard County.

(a) Sliding shell limit scale:

1. The shell limit shall be twenty-five (25) when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2); and

2. The shell limit shall be fifteen (15) when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2).

(b) At least one (1) person in a blind shall be eighteen (18) years of age or older while hunting from a department blind at Ballard WMA or Boatwright WMA.

(c) At Ballard Wildlife Management Area:

1. Waterfowl hunting shall be permitted during an open waterfowl season occurring before October 15.

2. The duck, coot, and merganser season shall be December 3 through January 25.

3. The goose season shall be December 3 through January 31.

4. Youth waterfowl season shall be the first weekend in February.

5. A waterfowl hunter shall not hunt on a Monday, Tuesday, Christmas Day, or New Year's Day.

6. A waterfowl hunter shall:

a. Apply in advance in accordance with Section 6 of this administrative regulation;

b. Case his gun while using department-supplied transportation to and from a blind;

c. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15; and

d. Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(d) At Boatwright Wildlife Management Area, including the Olmsted, Peal and Swan Lake units:

1. Each party shall:

a. Not hunt on a Monday, Tuesday, Christmas Day or New Year's Day;

b. Have in their possession, by 8 a.m. during the December 3 through January 31 segment of the waterfowl season, a daily check-in card before entering the area to set a blind, place decoys, or hunt; and

c. Check out the same day by:

(i) Visiting a department-designated check station prior to 8 a.m.; or

(ii) Depositing a card at a department-designated drop point after 8 a.m.

2. Duck season shall be open one half (1/2) hour before sunrise to sunset Thanksgiving Day for four (4) consecutive days on portions of Boatwright Wildlife Management Area open to hunting.

3. A department blind or blind site shall be assigned through a daily draw from December 3 through January 31.

4. A blind or blind site shall be offered to another hunter on a first-come, first-served basis, if the blind or blind site has not been assigned during the draw that day.

5. Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

6. Boat blinds shall not be permitted in flooded timber, except during periods of flood when no other access is possible and except mobility-impaired hunters may hunt from a boat, with no set-back restriction for those in the party assisting with the hunt. When boat blinds are permitted, there shall be a 200-yard minimum distance between boat blinds.

7. A party shall only hunt waterfowl from a permanent department blind or layout blind(s) set in such a manner that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party; or

8. A party shall only hunt waterfowl from a blind site or within 200 yards of a blind site assigned by the department during the December and January segment of the waterfowl season.

9. On the Peal unit:

a. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

b. More than four (4) parties shall not hunt at the same time on Fish Lake;

c. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;

d. A party shall not hunt waterfowl except from within twenty-five (25) feet of a blind site assigned by the department during December and January.

10. On the Swan Lake Unit, a person shall not hunt duck, coot, merganser, or goose other than a Canada Goose except from a blind or blind site assigned by the department and unless:

a. The season for these species is open, and

b. The season for Canada Goose is also open.

c. Except, that area open for hunting during the Canada goose season shall also be open during the Snow Goose Conservation Order without blind restrictions.

(4) Barkley Lake Wildlife Management Area-

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) A person shall establish a permanent blind within ten (10) yards of his or her blind site within:

1. An area bounded by the mouth of Donaldson Creek, the



east side of the Cumberland River Channel and the boat ramp at Linton.

2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.

(c) The following refuge areas are closed to the public:

1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and the TVA power transmission lines at river mile 55.5.

2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.

(d) From October 15 through March 15, a person shall not hunt:

1. Within 200 yards of, or

2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.

(5) Barren River Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) A waterfowl hunter:

1. May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

2. Shall not use a breech-loading firearm elsewhere on the area.

(6) Buckhorn Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(7) Miller Welch Central Kentucky Wildlife Management Area. A person shall not hunt waterfowl from October 15 through January 14.

(8) Cumberland Lake Wildlife Management Area. The following sections shall be closed to the public from October 15 through March 15:

(a) Weesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.

(b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.

(9) Daniel Boone National Forest Pioneer Weapons Wildlife Management Area. A waterfowl hunter:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(10) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(c) On Forked Lake, Indian Camp Lake, Fish Lake, Number Four Lake, and Black Lake, all waterfowl hunting after November 1:

1. Shall be from blind sites assigned by a random pre-season draw.

2. Shall be within ten (10) yards of a blind site, even during periods of Mississippi River flooding.

(11) Grayson Lake Wildlife Management Area. A person shall not hunt waterfowl.

(a) Within the no wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; and

(d) On three quarters (3/4) of a mile from the dam.

(12) Green River Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(13) Kaler Bottoms Wildlife Management Area. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(14) Land Between the Lakes.

(a) The following portions shall be closed to the public from November 1 through March 15.

1. Long Creek Pond;

2. The eastern one third (1/3) of Smith Bay; and

3. The eastern two thirds (2/3) of Duncan Bay.

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat over a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A waterfowl hunter shall remove decoys and personal effects daily.

(15) Nolin River Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(16) Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.

(17) Ohio River Waterfowl Refuge.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to the public from October 15 through March 15, except for quota deer hunting.

(18) Peabody Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The following portions, as posted by signs, are closed to the public from October 15 through March 15.

1. Sinclair Mine, as bounded by Hwy 176, the haul road, and Goose Lake Road as posted by signs; and

2. Homestead, as bounded by Cool Spring Wysex Road, H2 Road, H1 Road, and H6 Road, and areas posted by signs.

(19) The main block of Robinson Forest Wildlife Management Area shall be closed to waterfowl hunting.

(20) Sloughs Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(c) On the Grassy Pond Powell's Lake Unit, a waterfowl hunter:

1. Shall use a permanent blind provided by the department;

2. Shall remove decoys and personal effects from a blind or the vicinity of a blind daily; and

3. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(d) On the Jenny Hole Highlands Creek Unit, a waterfowl hunter:

1. Shall not establish or hunt from a blind closer than 200 yards from another hunting party; and

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

3. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(f) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation;

2. May occupy a blind not claimed by the permittee one (1) hour before sunrise;

3. Shall be limited to twenty-five (25) shells when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2);



4. Shall be limited to fifteen (15) shells when the daily bag limit for ducks is less than or equal to three (3) and the Canada geese limit is less than or equal to two (2);

5. Shall be accompanied by an adult if under eighteen (18) years of age; and

6. The waterfowl blind for mobility impaired persons will be open to the public only if the permit holder or another mobility-impaired person has not shown up to hunt on that day by one (1) hour before sunrise.

(g) The Cronshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except waterfowl from November 1 through March 15.

(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(21) South Shore Wildlife Management Area-

(a) Closed to all hunting November 15 through January 30, except quota hunt waterfowl and dove hunting.

(b) The quota hunt requires advance application and selection.

(c) Hunters shall use department blinds.

(d) Department blinds are allocated by a preseason draw. Applicants shall mail a three (3) by five (5) white index card with hunter information in an envelope to Grayson Lake WMA post marked between November 1 and November 15.

(22) Taylorsville Lake Wildlife Management Area. Shooting hours shall be thirty (30) minutes before sunrise until 2 p.m.

(23) Yatesville Lake Wildlife Management Area. The Greenbrier Creek Branch of Yatesville Lake, and Yatesville Lake, including all of the islands, north of the mouth of the Greenbrier Creek Branch shall be closed to all waterfowl hunting.

(24) Yellowbank Wildlife Management Area. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 6. (1) A person wishing to apply to hunt waterfowl on Ballard or Sauerheber Unit of Sloughs Wildlife Management Areas shall:

(a) Apply to the vendor supplied by the department by calling (877) 598-2401;

(b) Register between September 1 and September 30; and

(c) Pay a three (3) dollar application fee for each application.

(2) A person shall not apply more than one (1) time for each hunt.

(3) Each hunter drawn may bring up to three (3) additional hunters.

(4) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs in which hunter numbers are regulated as part of a preseason or daily drawing.

Section 7. State Parks. (1) There shall be no waterfowl hunting on state parks except as specified in the subsection (2) of this section.

(2) State Parks.

(a) There shall be an open waterfowl hunt December 13 through January 31 on designated areas of Barren River, Grayson Lake, Greenbe Lake, Lake Barkley, Lincoln Homestead, Paintsville Lake, Pennyrite Lake, and Yatesville Lake State Parks.

(b) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days in which the park office is not open.

(c) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(d) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days in which the park office is not open.

(e) Statewide waterfowl hunting requirements apply.

Section 8. Mentor Waterfowl Hunts at Minor Clark and Peter W. Pfeiffer Fish Hatcheries. (1) There shall be youth waterfowl mentor hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries.

(2) Dates shall be determined and published in the current Waterfowl Hunting Guide.

(3) Youths shall register in advance and carry postcard notification for the day of the hunt.

(4) Youths shall be accompanied by an adult eighteen (18) years or older.

(5) One (1) youth shall not be accompanied by more than one (1) adult.

(6) One (1) adult may accompany two (2) youths.

(7) Hunting shall only be permitted from established blinds and hunters shall not change blinds.

(8) Four (4) hunters shall be permitted per blind.

(9) Hunters may only discharge firearms from the blind.

(10) Hunters may only have fifteen (15) shotshells per hunter.

(11) Hunters shall immediately retrieve downed birds. Chasing or harassing waterfowl outside the blinds is strictly prohibited.

(12) Firearms shall be encased when traveling to and from the blind.

(13) Hunting shall end at noon and hunters shall be off the premises by 1 p.m.

(14) All decoys and equipment shall be removed at the end of each day's hunt.

(15) Hunters shall report harvest by dropping hunt permit at designated location.]

BENJY KINMAN, Deputy Commissioner

For JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: October 26, 2009

FILED WITH LRC: November 3, 2009 at 1 p.m.

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the U.S. Fish and Wildlife Service.

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2009-2010 waterfowl hunting requirements in accordance with the U.S. Fish and Wildlife Service and Kentucky Department of Fish and Wildlife Resources management objectives.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates, bag limits and other hunting requirements on public lands managed for waterfowl and public hunting opportunity by the department.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing waterfowl hunting seasons and area-specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with state, national and international management goals for this important natural resource.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: This is an amendment to an existing regulation. Each fall the U.S. Fish and Wildlife Service issues a federal mandate establishing frameworks for waterfowl hunting seasons in the United States. This amendment reflects the federal mandate regulations for waterfowl hunting within the requirements of the Migratory Bird Treaty Act. This amendment will allow hunters who are drawn to hunt at Sloughs WMA the ability to hunt waterfowl within 25 yards of certain full-season blind locations. It also opens up the Minor Clark Hatchery youth and mentor quota hunt drawings to mobility-impaired individuals.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the U.S. Fish

and Wildlife Service and continue efforts to increase quality hunting opportunity for waterfowl and migratory game birds.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new of by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will have to review the hunting guide or website for the updated information to hunt legally during the specified season.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt waterfowl in the state.

(5) Provide an estimate of how much it will cost to implement this administrative regulation.

(a) Initially: This administrative regulation change will result in no additional cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations to restrict the methods for the taking of wildlife.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first

year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's waterfowl hunters. The greatest wintering and migrating waterfowl concentrations are located on public wetlands managed by KDFWR. KDFWR imposes more restrictive hunting regulations on these lands in effort to meet international waterfowl management objectives while still providing quality hunting opportunity consistent with waterfowl population objectives.

#### STATEMENT OF EMERGENCY 405 KAR 8:015E

KRS 224.10-100(6) requires the cabinet to provide a program for the control and regulation of surface mining in a manner to accomplish the goals of KRS Chapter 350. A well-funded and adequately-staffed permitting program is essential to the goal of preventing the injurious effects of surface mining on the people and natural resources of the Commonwealth set out in KRS 350.020. KRS 224.10-100(20) provides the cabinet with the authority to establish fees for the cost of processing applications for permits. The permitting process is the step by which the cabinet can ensure that adequate and proper controls are placed on these operations. Currently, the amount received from the permitting process does not cover the cost of staff and resources for the surface mining permitting program. The cabinet is unable to provide timely and thorough review of the permit applications or to provide timely action on permits to mining entities. The time required to promulgate an ordinary regulation will not allow the cabinet to address the loss of these abilities. Thus, Kentucky's role in the safe and environmentally sound production of energy resources to meet national

needs is jeopardized and therefore creates a necessity to pursue an emergency regulation. This emergency administrative regulation will allow the cabinet to provide staffing and resources necessary to meet the goals of KRS 224.10-100(6) and 350.020. The emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BRESHEAR, Governor  
LEONARD K. PETERS, Secretary

**ENERGY AND ENVIRONMENT CABINET**  
**Department for Natural Resources**  
**Division of Mine Permits**  
**(New Emergency Administrative Regulation)**

**405 KAR 8:015E. Processing assessments.**

RELATES TO: KRS 224.10-100(6), (20), 350.060, 350.070, 350.135

STATUTORY AUTHORITY: KRS 224.10-100(6), (20)

EFFECTIVE: November 3, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(20) provides the cabinet the authority to promulgate administrative regulations to establish a fee or schedule of fees for the cost of processing applications for permits. This administrative regulation establishes a schedule of assessments related to the processing of various types of permit applications corresponding to KRS Chapter 350.

Section 1. Processing Assessments. (1) An applicant shall remit a processing assessment on each of the following applications submitted to the cabinet. The assessments shall be applied in the following manner:

- (a) \$2,125 for an original application,
- (b) \$1,375 for an amendment or major revision;
- (c) \$375 for a minor revision, renewal or transfer.

(2) The processing assessment shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. An application shall not be processed unless the appropriate assessment accompanies the application.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 27, 2009

FILED WITH LRC: November 3, 2009 at 1 p.m.

CONTACT PERSON: Ronald P. Mills, Director, Division of Mine Permits, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-2340, fax (502) 564-5848, email [Ron.Mills@ky.gov](mailto:Ron.Mills@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Ronald P. Mills, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a schedule of assessments related to the processing of various types of permit applications corresponding to KRS Chapter 350.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the assessment schedule to a permit applicant who submits an original application, renewal, major or minor revision, amendment, or a transfer.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(6) gives the cabinet the authority to provide for the control and regulation of surface coal mining and reclamation in a manner to accomplish the purposes of KRS Chapter 350. KRS 224.10-100(20) authorizes the cabinet to recover costs associated with the processing of applications for permits authorized by KRS 224.10-100. This administrative regulation establishes a processing assessment for original application, renewal, major or minor revision, amendment, or a transfer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-

trative regulation establishes assessments that will enable the cabinet to perform the duties required by KRS Chapter 350.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact surface mines throughout the Commonwealth of Kentucky. There are 415 coal companies in the Commonwealth with inspectable permits. In Fiscal Year 2009 there were 1,187 permitting actions to which these assessments would have been applicable. The ten year average is 1,012.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The regulated entities will be responsible for submitting the appropriate assessment with their permit applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The type of permit application the regulated entity submits will determine the cost to the entity. The associated costs are:

- \$2,125 for an original application;
- \$1,375 for an amendment or major revision;
- \$375 for a minor revision, renewal or transfer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed assessments will enable the Division of Mine Permits to hire additional permit review staff which will decrease the permit review time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Implementation of these changes will be absorbed by current staff.

(b) On a continuing basis: Implementation of these changes will be absorbed by current staff on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source associated with this program amendment will be the assessments listed above. However, these assessments will be deposited into a Restricted Fund for the sole use of the department.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does establish an assessment that will fund the program change.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an assessment that follows the schedule listed in Section 1 of this administrative regulation.

(9) TIERING: Is tiering applied? Yes. Tiering was applied to the cost of the permit applications. Depending on the type of application a different assessment amount was established.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits will be impacted because the established assessment will

be used to hire additional staff in order to reduce permit review time

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(6) provides for the control and regulation of surface coal mining and reclamation in a manner to accomplish the purposes of KRS Chapter 350. KRS 224.10-100(20) authorizes the cabinet to recover costs associated with the processing of applications for permits authorized by KRS 224.10-100.

4 Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will increase the revenues of the state by approximately \$794,500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will increase the revenues of the state by approximately \$794,500 in subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will generate revenue. However, existing resources will be used to process assessments

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will generate revenue. However, existing resources will be used to process assessments.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

#### STATEMENT OF EMERGENCY 505 KAR 1:160E

This emergency administrative regulation is being promulgated in order to implement amended policies relating to the treatment of juvenile sexual offenders for use by the Department of Juvenile Justice, in conjunction with the Standard Operating Procedures Manual for the Treatment of Juvenile Sexual Offenders which was previously incorporated by reference in 505 KAR 1:160. KRS 13A.190(1)(a)(3) provides that an emergency regulation is one that must be immediately effective to "[m]eet a deadline for the promulgation of an administrative regulation that is established by state law, or federal law or regulation." The proposed administrative action must be taken on an emergency basis because the Department of Juvenile Justice has a compelling and immediate obligation to institute a treatment program for juvenile sexual offenders that is valid under state law. Portions of the policies relating to application of the sex offender treatment program which were implemented through 505 KAR 1:160 were invalidated by the Franklin Circuit Court in the case of *Pettitioner 1, et al. v. Payne, et al.*, 06-CI-01734. As such, the Department of Juvenile Justice through this emergency regulation seeks to make its treatment program for juvenile sexual offenders consistent with the requirements of the Juvenile Code. The ordinary administrative regulation is identical to this emergency administrative regulation and is being filed with the Regulations Compiler simultaneously with this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
J. MICHAEL BROWN, Secretary  
J. RONALD HAWS, Commissioner

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Emergency Amendment)

505 KAR 1:160E. Department of Juvenile Justice Policies and Procedures: treatment program for juvenile sexual offenders~~[juveniles with sexual behavior problems and offenses]~~

RELATES TO. KRS 15A.065, 15A.067, 200.080-120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095~~(—635.190(7))~~, 635.095, 635.500, 635.505(1), 635.515, 635.520, 640.120, 645.250

EFFECTIVE. November 13, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, 635.520, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Sexual Offender Treatment Program ~~[for Juveniles with Sexual Behavior Problems and Offenses]~~", November 13, 2009~~[January 9, 2007]~~, which includes the following:

800 Treatment Program for Juvenile Sexual Offenders~~[Juveniles with Sexual Behavior Problems and Offenses]~~ (Amended 11/13/09~~[4/9/07]~~);

[801 Intake and Assessment (Amended 1/9/07);

802 Sex Offender Specific Treatment Protocol (Amended 1/9/07);]

803 Polygraph Examinations (Amended 11/13/09~~[4/9/07]~~);

[804 Juvenile Sexual Offender Registry (Amended 1/9/07);

805 Youthful Offenders (Amended 1/9/07);]

806 Juvenile Sexual~~[Sex]~~ Offender Treatment and Assessment Professional Approval Process~~[Provider]~~ (Amended 11/13/09~~[4/9/07]~~).

(b) The "Standard Operating Procedures Manual for the Treatment of Juvenile Sexual Offenders" ~~[Program for Juveniles with Sexual Behavior Problems and Offenses]~~ (Amended 11/13/09~~[4/9/07]~~);

(c) The "Estimate of Risk of Adolescent Sex Offense Recidivism (ERASOR)", 08/15/06, [and]

(d) The "Juvenile Sex Offender Assessment Protocol (J-SOAP)", 08/15/06;

(e) The "Juvenile Sexual Offender Tracking system Initial Reporting Form Part I", 11/13/09; and

(f) The "Juvenile Sexual Offender Tracking System Reporting Form Part II", 11/13/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

J. RONALD HAWS, Commissioner

APPROVED BY AGENCY. November 12, 2009

FILED WITH LRC: November 13, 2009 at 10 a.m.

CONTACT PERSON: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person. LaDonna Koebel, Assistant General Counsel

(1) Provide a brief summary of.

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing

the operation of the Department of Juvenile Justice sex offender treatment program, including the rights and responsibilities of the Department of Juvenile Justice employees, treatment providers and the residential and community population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, 635.500, 635.505(1), 635.515 and 635.520 and to specifically provide a treatment protocol for juvenile sexual offenders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the sexual offender treatment protocol of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise sexual offender treatment protocol to the Department of Juvenile Justice employees, treatment providers and the residential and community population as to their duties, rights, privileges and responsibilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will provide a uniform written sexual offender treatment protocol for all youth committed to the Department of Juvenile Justice and declared juvenile sexual offenders, and reflect the treatment and practice of the agency.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, 635.500, 635.505(1), 635.520, and 635.515.

(c) How the amendment conforms to the content of the authorizing statutes: It provides for the operation, policies and procedures governing the department of Juvenile Justice sexual offender treatment program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the Department of Juvenile Justice to treat juvenile sexual offenders more efficiently and uniformly.

(3) List type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 youth annually, 20 treatment providers, and department personnel.

(4) Provide analysis of how the entities identified in question (3) will be impacted by the implementation of this regulation, if new, or by the change, if it is an amendment, including:

(a) By providing and implementing a clear and concise sexual offender treatment protocol for the Department of Juvenile Justice employees, treatment providers, and the residential and community population, the juvenile sexual offender treatment program will be managed more effectively and consistently. The revised treatment program will be structured to meet the individual youth's treatment needs.

(b) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The youth who participate in the juvenile sexual offender treatment program will be provided with specific information regarding the required treatment protocol and the steps that shall be expected of them to complete the treatment program. Treatment providers and DJJ employees will provide assessments and treatment in accordance with the treatment protocol as outlined in the regulation and the materials incorporated by reference.

(c) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In complying with this administrative regulation no monetary costs will be incurred by the youth, the treatment providers, or the DJJ employees. All costs of implementation of this treatment protocol will be paid out of budgeted monies by the Department of Juvenile Justice.

(d) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth who receive treatment in the juvenile sexual offender treatment program shall be more effectively and consistently served. The treatment providers and the DJJ employees who administer the assessments and the treatment protocol shall provide treatment tailored to the youth's individual needs.

(5) Provide an estimate of how much it will cost the administra-

tive body to implement this administrative regulation:

(a) Initially: \$5,000 for training staff

(b) On a continuing basis: \$5,000 for training staff

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) Tiering: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

(2) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Response: Department of Juvenile Justice.

(3) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 200.115, 605.150, 635.095, 635.100(7), 635.500, 635.505(1), 635.520, 635.515, 640.120, and 645.250.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? See narrative provided below.

(5) How much will it cost to administer this program for subsequent years? See narrative provided below.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation will provide a uniform written sexual offender treatment protocol for all youth committed to the Department of Juvenile Justice who are declared juvenile sexual offenders, and reflect the treatment and practice of the agency. The only expense regarding this regulation is the cost of staff training, which for the first year is approximately \$5,000.

#### STATEMENT OF EMERGENCY 750 KAR 1:010E

The American Recovery and Reinvestment Act of 2009 (ARRA) provides for a variety of new innovative bond programs supported through direct federal subsidies and/or tax credits. The ARRA authorized a Qualified School Construction Bond (QSCB) program for 2009 and 2010, which allocated \$11 billion in tax credit bonds to be administered by the U.S. Treasury for 2009. Kentucky's share is \$135,132,000 and Louisville/Jefferson County also received a direct allocation of \$27,483,000 for 2009. This emergency regulation permits local and/or state issuers to immediately

begin utilizing the unique provisions of this program, which differs significantly from Kentucky's traditional school bond finance program. This administrative regulation must be filed as soon as possible in order to take advantage of this time limited program which will expire upon the expiration of the ARRA. An ordinary administrative regulation is not sufficient as time is of the essence in the utilization of this program. Implementing this program pursuant to an ordinary regulation could cost Kentucky federal subsidies by not taking advantage of the favorable funding opportunities under this program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor  
JONATHAN MILLER, Commissioner

**FINANCE AND ADMINISTRATION CABINET  
Office of the Secretary  
(Emergency Amendment)**

**750 KAR 1:010E. Commission procedures.**

RELATES TO: KRS 157.420, 157.440, 157.611, 157.615, 157.617, 157.620, 157.622

STATUTORY AUTHORITY: KRS 157.617(1), 157.622(4)

EFFECTIVE: November 13, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.617(1) authorizes the School Facilities Construction Commission (SFCC) to promulgate administrative regulations for the orderly conduct of its affairs, including assisting local school districts to meet the school construction needs of the state. KRS 157.622(4) requires the SFCC to promulgate an administrative regulation governing allocations of state funds to eligible school districts. This administrative regulation establishes the procedures the SFCC utilizes in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditure of funds, cumulating credit for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project, and allocating savings from refinancings.

Section 1. Definitions (1) "Available local revenue" is defined by KRS 157.615(1).

(2) "Daily interest" means the total interest divided by the number of days in the first coupon.

(3) "Eligible district" is defined by KRS 157.615(16).

(4) "Level repayment schedule" means a repayment schedule in which the combined annual amount of principal and interest payments for each issue of bonds remains relatively constant over the life of the issue.

(5) "Maximum annual repayment amount" means the maximum aggregate total of SFCC annual payments for all bonds issued for a particular school district in which the SFCC has participated. If a bond series has been refunded, the original issue and debt schedule shall be the one used in making this computation.

(6) "Offer of assistance" means the amount available for a school district from a current biennium along with any allocation available from a prior period which has not expired according to KRS 157.622(5) and (6).

(7) "SFCC" means the School Facilities Construction Commission.

(8) "Total interest" means the first gross interest payment of the debt service for the SFCC portion of the schedule.

Section 2. Eligibility. (1) The SFCC shall use the statement of need and available local revenue as certified by the Kentucky Board of Education in determining the rate of participation of each school district in any given biennium. Eligibility for participation as established in KRS 157.620(1) shall be certified by the Kentucky Board of Education.

(2) A school district retaining capital outlay funds in its current expense general fund under the provisions of KRS 157.420 in the

year preceding the biennium in which funds are available or during the biennium shall be ineligible to participate in the SFCC Program during that funding period.

Section 3. Rate of Participation. (1) The rate of participation of each eligible district shall be determined by dividing the unmet needs of that district by the total unmet needs of all eligible districts and multiplying that fraction times the total new debt service budgeted for the biennium.

(2) If there are insufficient funds budgeted in the first year of the biennium to fund all the requests, bond sales shall be scheduled in the order in which the SFCC receives requests for approval of bond sales.

(3) All bond sales may proceed after January 1 of the first year of the biennium.

Section 4. Offer of Assistance. Upon certification of the rate of participation by the SFCC, the Executive Director of the SFCC shall notify each eligible district of its entitled rate of participation and the requirements to be met if it wishes to accept the offer of assistance. These requirements shall include:

(1) The amount of local revenue to be expended as certified by the Kentucky Board of Education;

(2) The priority order of facilities to be built as certified by the Kentucky Board of Education; and

(3) The sequence of events and deadlines to be met if the local school district accepts the offer of assistance.

Section 5. Acceptance of Offer of Assistance. (1) Within thirty (30) days of receipt of the offer of assistance, the local board of education shall notify the SFCC of acceptance or rejection of the offer of assistance. The local district response shall indicate the amount of the offer it plans to commit to construction or renovation immediately and the amount it wishes to count as cumulative credit.

(2) A district not responding within thirty (30) days shall be declared ineligible and the offer of assistance shall be withdrawn and redistributed to the eligible recipients. In extenuating circumstances and upon written request within the original thirty (30) day period, a single thirty (30) day extension shall be granted by the Executive Director of the SFCC.

Section 6. Review of Building Plans. The review and approval of building plans shall be the responsibility of the Kentucky Department of Education.

Section 7. Allowable Expenditures of Funds. (1) Funds available from available local revenue shall be expended before funds generated by bond sales authorized by the SFCC.

(2) Funds available for a project shall be expended for the purpose of major renovation or construction of the identified project except that the balance of funds remaining after the completion of the project may be expended on the next project on the approved facilities plan of the respective districts

(3) Project costs may include site acquisition, providing architectural and engineering services, financial and legal services, and equipment.

(a) The site acquisition cost shall be limited to the lesser of:

1. The actual cost of acquiring a site; or

2. The fair market value of the site as determined by a qualified appraisal obtained by the SFCC and charged to the project account.

(b) Construction costs shall not include the cost of supplies. An item shall be considered a supply if the item:

1. Does not retain its original shape, appearance, and character with use;

2. Loses its identity through fabrication or incorporation into a different or more complex unit;

3. Is expendable. An item shall be expendable if it is more feasible to replace, rather than repair, an item that has been damaged or has lost or worn parts;

4. Is expected to serve its principal purpose for less than ten (10) years, even with reasonable care and maintenance;

5. Is not an integral part of the building. An item shall be an



integral part of a building if it:

- a. Is permanently fastened or attached to the building;
- b. Functions as part of the building, meaning that the item is essential for the building or site to be used for its intended purpose; or
- c. Will cause appreciable damage to the building if removed; or
- 6. Does not enhance the value of a bondholder's collateral or the project.

(4) SFCC funds or funds from the restricted account shall not be used to:

- (a) Purchase a site not approved by the Kentucky Department of Education in accordance with 702 KAR 4 050; or
- (b) Reimburse the local board of education for a site acquired before enactment of KRS 157.611.

Section 8. Bond Issuance Procedures. (1) Upon acceptance of an offer of assistance by a local school district, the SFCC shall determine if the local school district or the SFCC shall issue the bonds. Local school districts may request authority from the SFCC to issue the bonds through a city, county, or other agency and instrumentality of the Board of Education.

(2) If the SFCC grants permission to issue bonds at the local level, the procedures for issuing the bonds shall be as follows:

- (a) The local board of education shall obtain the services of a financial advisor;
- (b) The contract with the financial advisor shall be submitted to the SFCC for final approval after signature by the local school district and the financial advisor; and
- (c) The local board of education shall obtain the services of a licensed trustee, paying agent, and registrar.

(3) If the size of the bond issues is less than \$1,000,000 or there is no local participation in the repayment, the SFCC may determine that it is in the best interests of the SFCC and the local school board for the SFCC to manage the bond sale procedures. If the SFCC determines that it is in the best interest of the SFCC and the local school board for the SFCC to manage the bond sale procedures:

- (a) The bonds shall be sold in the name of the SFCC;
- (b) The SFCC shall obtain the services of a financial advisor;
- (c) The SFCC may combine multiple projects into single bond issues; and
- (d) The SFCC shall obtain the services of a licensed trustee, paying agent, and registrar.

(4) The following procedures shall be followed by all participating districts in construction of SFCC debt service schedules:

(a) The SFCC's portion of the bond sale shall be limited to a twenty (20) year issue, with a level repayment schedule. The maximum annual repayment amount shall not exceed the offer of assistance from the SFCC.

1. The debt service schedule shall have twenty (20) years of payments based on six (6) month intervals or forty (40) payments. If the payments begin so that only one (1) payment is made in the first fiscal year of the schedule, payments may extend over twenty-one (21) fiscal years, if the amounts of the first and last payments combined do not exceed the amount of one (1) annual payment.

2. Annual payments shall be based on a fiscal year. The fiscal year of the SFCC shall begin on July 1 and end the following June 30. All schedules shall be prepared in a way that annual amounts based on a fiscal year are presented in a clear, easy-to-read format while each interest and principal payment is both segregated and totaled by payment period.

(b) The local school district's portion of the bond sale shall be structured to meet the unique financial needs of the district. Debt service on the bonds issued shall include the minimum amount required for eligibility to participate in the program as certified by the Kentucky Board of Education. The minimum term of the local bond issue to meet eligibility criteria shall be twenty (20) years. At the discretion of the local board of education, the bond issue may include a local contribution to debt service in excess of the minimum required, and the length of the local portion of the repayment schedule may exceed twenty (20) years.

(c) Interest collected and accrued on funds derived from the bond sale shall be allocated to the debt service schedules of the school district and the SFCC in the same proportions as its respec-

tive participation in the bond issue.

1. For allocation purposes, each month shall be calculated as thirty (30) days.

2. The accrued interest allocated to the SFCC shall be calculated by multiplying the number of days times the daily interest.

3. The number of days shall be calculated from the issue date of the bonds to the day the bonds are delivered, excluding the day of settlement.

4. If local payments are involved in the bond issue, the accrued interest available to the local district shall be calculated as required by subparagraph 2 of this paragraph.

(d) The proceeds of the bond sale shall be continually invested until expended on the project or until the project is completed. Any remaining proceeds or investment income received after completion of the project shall be applied to the debt service. Credit against the district's and the SFCC's debt service schedule shall be applied in the same percentage as the participation in the bond issue or, if permitted by the bond resolution or indenture, excess funds may be applied to an approved project next in order priority.

(e) A certificate of project completion shall be filed with the SFCC by the local school district. The certificate shall summarize the application of the bond proceeds, investment earnings, and any remaining funds from either source. The certificate shall also verify the use of cash contribution as may be required for eligibility by the local school district.

(f) Fees paid to a financial advisor shall be in accordance with this paragraph. A fee that exceeds this schedule shall be paid by the local board of education.

1. The maximum fee for services and expenses of a fiscal agent shall be the highest amount according to the following schedule:

- a. \$7,500, for any amount of bonds issued;
- b. \$11 per \$1,000, if the bond amount is under \$1 million;
- c. \$10 per \$1,000, if the bond amount is between \$1 million and \$2 million; or
- d. \$4 per \$1,000, if the bond amount is over \$2 million.

2. The fee shall:

- a. Be based upon the amount of bonds actually issued;
- b. Include attorney fees, printing of bonds and official statements, advertising the bond issue, travel of the fiscal agent, and other normal expenses related to the bond closing; and
- c. Not include a title search or rating service.

Section 9. Cumulative Credit. Any eligible district which fails in any budget period to receive an allocation of state funds sufficient to fund the first priority project on the approved facilities plan of the district may request the approval of the SFCC to accumulate credit subject to the availability of funds, for its unused state allocation for a period not to exceed eight (8) years. Districts which receive funds in excess of those required to complete the first project may apply those funds to the next priority project on their approved facilities plan. If there are insufficient funds to complete the next project, those funds may accumulate as previously outlined. All fund credit accumulated in this manner shall be forfeited at any time that the local district fails to accept an offer of assistance tendered to the district.

Section 10. Refinancing Savings. Savings that occur as the result of a refinancing in which the SFCC was a participant shall be divided as follows and in the following order of priority:

(1) If the SFCC's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service can be maintained on behalf of the SFCC, it shall be maintained at the same annual amount; therefore, lowering the local district's account for annual debt service payments by the amount of the total savings on the refinancing. Consequently, the bonding capacity of the local district shall be increased allowing the district to pursue its next facility priority. Any accrued interest shall be deemed a part of the total savings.

(2) If the SFCC's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service paid on behalf of the SFCC is greater than the annual debt service of the refinanced bond issue debt, annual savings generated shall be added to that school district's cumulative credit

with the SFCC. These credits shall have no expiration time period for their use.

Section 11. Notwithstanding any other provision of this administrative regulation that conflict with the provisions of this section, and pursuant to the applicable provisions of the American Recovery and Reinvestment Act of 2009, (ARRA), Pub L. 111-5, and Notices 2009-30 and 2009-35 issued by the U.S. Department of the Treasury, the SFCC shall be authorized to take advantage of any and all provisions to maximize and realize benefits and favorable treatment related to the structuring of financial bond transactions to or on behalf of the eligible school districts even if portions of the prospective financing arrangements conflict with any other provision of this administrative regulation.

JONATHAN MILLER, November 12, 2009

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009 at noon

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins, Policy Advisor

(1) Provide a brief summary of

(a) What this administrative regulation does: Allows school districts to utilize Qualified School Construction Bonds pursuant to the ARRA for the construction, rehabilitation or repair of a public school facility or for the acquisition of land for such a purpose. The necessity of this administrative regulation. See Answer to Section (1)(a).

(b) How this administrative regulation conforms to the content of the authorizing statutes: Provides school districts with guidance on the process for bond issues that have School Facilities Service Commission participation.

(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Allows school districts more options and flexibility with their financing of construction, rehabilitation and repairs of public school facilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Provides more flexibility in the bonding process and related financial terms for school district bond issues consistent with ARRA.

(b) The necessity of the amendment to this administrative regulation: Authorizing federal law is time limited. Amendment is needed to take advantage of this narrow window of time.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c).

(d) How the amendment will assist in the effective administration of the statutes: See 1(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts with construction, rehabilitation or repair projects of public school facilities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated agencies identified in question (3) will have to take to comply with this administrative regulation or amendment: No greater action than they are already required to take under current regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Ability to potentially obtain financing on more favorable terms.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering has been applied at the application level by the Kentucky Department of Education (KDOE). KDOE has established a minimum threshold level for allocation of the ARRA resources.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Pub.L. No. 111-5 (2009) and U.S. Department of Treasury Notices 2009-30 and 2009-35.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation is expected to reduce the cost of borrowing for qualifying projects over the life of the bonds issued under the provisions of ARRA, but is ultimately dependant upon market forces and the other aspects incident to a sale of bonds. These provisions are only beneficial to school districts.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation does not raise revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See answer to #4a.

(c) How much will it cost to administer this program for the first year? No additional cost

(d) How much will it cost to administer this program for subsequent years? No additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): See answer to 4 above.

Other Explanation: N/A

#### STATEMENT OF EMERGENCY 906 KAR 1:180E

This emergency administrative regulation is being promulgated to establish standards for the certification of personal services agencies. This action must be taken on an emergency basis to meet the deadline for the promulgation of an administrative regulation required by SB 22 from the 2009 GA. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) would violate the requirements of SB 22 from the 2009 GA, codified at KRS 216.710 through 216.716. Statutory authority for the promulgation of this administrative regulation is established in KRS 216.712(4). This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.



STEVE BESHEAR, Governor  
JANIE MILLER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**

Office of Inspector General

Division of Health Care

(New Emergency Administrative Regulation)

**906 KAR 1:180E. Operation and services; personal services agencies.**

RELATES TO: KRS Chapter 13B, 209.030(2), (3), 216.710-216.716, 216B.015, 620.030(1)

STATUTORY AUTHORITY: KRS 216.712(4)

EFFECTIVE: November 13, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.712(1) provides that no personal services agency shall be operated, maintained, or advertised without obtaining certification from the Cabinet for Health and Family Services. KRS 216.712(4) requires the cabinet Secretary to promulgate administrative regulations to implement KRS 216.712 through 216.716. This administrative regulation establishes standards for the certification of personal services agencies.

Section 1. Definitions. (1) "Adverse action" means action taken by the cabinet's Office of Inspector General (OIG) to deny or revoke the certification of a personal services agency.

(2) "Cabinet" is defined by KRS 216.710(1).

(3) "Certification" means that a person, business entity, corporation, or association, either for-profit or not-for-profit, has been issued a certificate by the Office of Inspector General to operate a personal services agency.

(4) "Client" is defined by KRS 216.710(2).

(5) "Designated representative" is defined by KRS 216.710(5)

(6) "Direct service" is defined by KRS 216.710(6).

(7) "Employee" means an individual who is directly employed by a personal services agency, an agent of a personal services agency, or an independent contractor who has a contractual arrangement with a personal services agency to provide personal services.

(8) "Facilitate the self-administration of medication" means:

(a) Reminding the client to take medications;

(b) Reading the medication's label;

(c) Confirming that medication is being taken by the client for whom it is prescribed;

(d) Opening the dosage packaging or medication container but not removing or handling the actual medication;

(e) Storing the medication in a manner that is accessible to the client, and

(f) Making available the means of communicating with the client's physician and pharmacy for prescriptions by telephone, facsimile, or other electronic device.

(9) "Parent personal services agency" is defined by KRS 216.710(9).

(10) "Personal services" is defined by KRS 216.710(7).

(11) "Personal services agency" is defined by KRS 216.710(8).

(12) "Provisional certification" means that the Office of Inspector General (OIG) has issued a ninety (90) day preliminary certificate to operate a personal services agency to a person, business entity, corporation, or association, either for-profit or not-for-profit, which:

(a) Has three (3) or fewer employees at the time of initial application; and

(b) Indicated on the application that it intends to hire additional employees within ninety (90) calendar days of the date of the application.

(13) "Significant financial interest" means lawful, direct or indirect ownership of a personal services agency or health care facility licensed pursuant to KRS Chapter 216B in an amount equal to or greater than twenty-five (25) percent total ownership of the personal services agency or health care facility.

Section 2. Certification of Personal Services Agencies. (1) To operate a personal services agency, a person or entity shall obtain

certification from the Office of Inspector General.

(2) An out-of-state personal services agency shall be required to establish a parent personal services agency in Kentucky to obtain certification.

(3) A branch office of a parent personal services agency shall be owned and controlled by the parent personal services agency.

(4) A "health facility" or a "health service" as defined by KRS 216B.015 or a health-care practitioner licensed, certified, or regulated by local, state, or federal statutes or regulations shall not be required to obtain certification to provide personal services pursuant to KRS 216.710(7)(b)9.

Section 3. Initial Application, Provisional Certification, and Approval. (1)(a) Except for an entity that operates a personal services agency in Kentucky prior to December 31, 2009, no person, entity, corporation, or association shall provide personal services prior to obtaining certification.

(b) Pursuant to KRS 216.712(1), an entity that operates a personal services agency in Kentucky prior to December 31, 2009, shall have until that date to file an application as described in subsection (2) of this section.

(2) An applicant for initial certification, including provisional certification, shall submit to the OIG:

(a) An initial application fee of \$500 made payable to the Kentucky State Treasurer;

(b) A completed Application for Certification to Operate a Personal Services Agency, OIG - 1180, November 2009, incorporated by reference in Section 16 of this administrative regulation; and

(c) Documentation required by Section 3 A if applicable, and Section 6 of the application.

(3) Approval of initial certification shall be contingent on:

(a) Submission of the initial application fee of \$500,

(b) The applicant's demonstration of compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

(c) Submission of the documentation required by Section 3.A if applicable, and Section 6 of the application.

(4)(a) Approval of provisional certification shall be contingent on:

1. Submission of the initial application fee of \$500;

2. The applicant's demonstration of compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

3. Submission of the documentation required by Section 3 A if applicable, and Section 6 of the application.

(b) A personal services agency operating under provisional certification shall, no later than fourteen (14) calendar days prior to expiration of the provisional certificate, submit employee information required by Section 6, paragraph 2 of the Application for Certification to Operate a Personal Services Agency, OIG - 1180 for each employee hired by the agency after submission of the application for initial certification.

(c) If a personal services agency operates under provisional certification prior to approval of initial certification, the initial certification period shall expire one (1) year from the date of the provisional certificate.

Section 4. Annual Recertification. (1) At least sixty (60) calendar days prior to expiration of certification, the personal services agency shall submit to the OIG:

(a) An annual recertification fee of \$350 made payable to the Kentucky State Treasurer;

(b) A completed Application for Certification to Operate a Personal Services Agency, OIG - 1180, November 2009, incorporated by reference in Section 16 of this administrative regulation; and

(c) Documentation required by Section 6 of the application.

(2) Approval of recertification shall be contingent on:

(a) Submission of the annual recertification fee of \$350,

(b) The applicant's demonstration of continued compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180, and

(c) Submission of documentation required by Section 6 of the application.

Section 5. Change of Status. (1) Within thirty (30) calendar days after a change in an ownership interest of more than twenty-five (25) percent of a personal services agency, the following shall be submitted to the OIG:

(a) An Application for Certification to Operate a Personal Services Agency, OIG - 1180;

(b) Documentation required by Section 3.A if applicable, and Section 6 of the application;

(c) A fee of \$350 made payable to the Kentucky State Treasurer; and

(d) A bill of sale or comparable document which includes:

1. The name and signature of the new owner or corporation;
2. The name and signature of the buyer and the seller; and
3. The effective date of the transaction

(2) Following a change of ownership reported in accordance with subsection (1) of this section, certification shall be effective for a period of one (1) year from the date the change of ownership is approved by the OIG.

(3) A personal services agency shall notify the OIG in writing within thirty (30) calendar days after the effective date of:

- (a) A change of name;
- (b) A change in the location of the parent personal services agency or a branch office;
- (c) The opening of a new branch office in Kentucky; or
- (d) The closing of the parent personal services agency or an existing branch office within the state

Section 6. Staff Requirements. (1)(a) A personal services agency shall employ an individual to act as the personal services agency's manager.

(b) The manager shall be responsible for the organization and daily operation of the personal services agency.

(c) The manager shall designate in writing one (1) or more individuals to act on behalf of, or to perform any or all of the manager's responsibilities during the time in which the manager is unavailable to perform daily managerial duties for at least three (3) consecutive business days.

(2) Prior to acting as a personal services agency's manager, or prior to providing direct services to a client, an applicant for employment in a personal services agency shall submit to, and have completed a:

(a)1. Criminal record check conducted by the Justice and Public Safety Cabinet or the Administrative Office of the Courts, or

2. Criminal record check conducted by means of a fingerprint check of the National Crime Information Database;

(b) Check of the nurse aide and home health aide abuse registry established pursuant to 906 KAR 1:100;

(c) Substance abuse test; and

(d)1. A tuberculosis (TB) risk assessment performed and reported by a physician, advanced registered nurse practitioner, physician's assistant, or registered nurse.

2. If the TB risk assessment indicates that the applicant for employment is at increased risk for developing tuberculosis infection, or for progressing to active TB disease if infected, the individual shall submit to the following for purposes of employment:

- a. Follow-up tuberculin skin test (TST); or
- b. Blood assay for M. tuberculosis (BAMT).

3. An individual who has a positive TST result or a positive BAMT result:

a. Shall have a medical evaluation for possible active TB and receive a chest x-ray; and

b. Shall not provide direct services to a client until evidence is provided to the personal services agency documenting that the individual is free of active TB as verified through a health professional's statement, signed by a physician, advanced registered nurse practitioner, physician's assistant, or registered nurse.

(3) A personal services agency shall not employ an individual to serve as a manager or provide direct services to a client if the individual:

- (a) Has been convicted of a crime defined by KRS 216.710(3);
- (b) Appears on the nurse aide and home health aide abuse

registry;

(c) Tests positive for the presence of an illegal drug; or

(d) Fails to provide:

1. A copy of the results of a health professional's statement documenting that the individual is free of active tuberculosis;

2. Documentation of a negative TST; or

3. Documentation of a negative BAMT.

(4) A personal services agency shall require its manager and each employee who provides direct services to a client to submit annually to, and have completed a:

(a)1. Criminal record check conducted by the Justice and Public Safety Cabinet or the Administrative Office of the Courts; or

2. Criminal records check conducted by means of a fingerprint check of the National Crime Information Database;

(b) Check of the nurse aide and home health aide abuse registry established pursuant to 906 KAR 1:100; and

(c)1. Tuberculosis risk assessment performed and reported by a physician, advanced registered nurse practitioner, physician's assistant, or registered nurse.

2. If a determination is made from the annual tuberculosis risk assessment that the employee is at increased risk for developing tuberculosis infection, or for progressing to active TB disease if infected, the employee shall submit to a follow-up TST or BAMT.

3. An employee who has a positive TST result or a newly positive BAMT shall have a medical evaluation for possible active TB and receive a chest x-ray.

4. If the annual tuberculosis screening reveals that the employee is recently infected, the employee shall not provide direct services to a client until evidence is provided documenting that the employee is free of active tuberculosis as verified through a health professional's statement signed by a physician, advanced registered nurse practitioner, physician's assistant, or a registered nurse.

(5) A personal services agency shall maintain documentation of the following in employee records:

(a) The results of each criminal record check conducted pursuant to subsections (2)(a) and (4)(a) of this section;

(b) The results of each check of the nurse aide and home health aide abuse registry conducted pursuant to subsections (2)(b) and (4)(b) of this section;

(c) The results of the substance abuse test conducted pursuant to subsection (1)(c) of this section; and

(d) Documentation from a health professional that the employee is free of active TB and, if applicable, documentation of a follow-up TST or BAMT, chest x-ray, or medical evaluation.

(6) A personal services agency shall.

(a) Maintain employee records for a period of at least five (5) years; and

(b) Ensure that the records of current employees are:

1. Maintained on the premises of the agency; or
2. Accessible via a central computer file.

(7) No personal services agency or agency employee shall be, or apply to be a client's:

- (a) Guardian;
- (b) Power of attorney;
- (c) Conservator;
- (d) Limited conservator;
- (e) Limited guardian;
- (f) Standby guardian; or
- (g) Testamentary guardian.

Section 7. Staff training and Competency. (1) Prior to providing direct services to a client, each employee shall receive training from the personal services agency regarding the following

(a) Procedures for reporting abuse, neglect, or exploitation of an adult pursuant to KRS 209.030(2) and (3), or child abuse or neglect pursuant to KRS 620.030(1);

(b) Procedures for facilitating the self-administration of medications, which prohibits an employee from:

1. Removing medication from its packaging or medication container; or

2. Handling medication for a client; and

(c) Effective communication techniques tailored to individual client needs.

(2)(a) A personal services agency shall evaluate the competency of each employee who will provide direct services to a client.

(b) The agency's evaluation to determine competency shall pertain to each personal services task the agency chooses to have the employee perform

(3)(a) An employee's evaluation and a determination by the personal services agency that the employee is competent to perform a personal services task shall occur before the employee performs the task for a client without direct agency supervision.

(b) The content of the employee's training and evaluation shall

1. Be documented and maintained in the employee's record, which shall be retained for a period of at least five (5) years; and
2. Include the date and the signature of the.
  - a. Person who conducted the training and evaluation; and
  - b. Employee who received the training and evaluation.

Section 8. Service Agreement. (1) Each personal services agency shall provide a written service agreement to the client or the client's designated representative that includes the following:

(a) The charge for each service provided by the personal services agency;

(b) The personal services agency's policy for notifying the client or client's designated representative of any change in the charge for services. Notice of an increase in the charge for services shall be given to a participating client or client's designated representative at least thirty (30) calendar days in advance of the effective date of the increase, and any increase in the amount billed to the client shall be documented on the client's service plan in accordance with Section 9(3) of this administrative regulation;

(c) The hours the personal services agency's office is open for business;

(d) The procedure for contacting the personal services agency's manager or the manager's designee;

(e) The procedure and telephone number to call for the purpose of filing a grievance with the personal services agency as described in Section 10 of this administrative regulation;

(f) An explanation of whether the personal services agency:

1. Directly employs the individual who will be providing personal services to the client,

2. Provides bonded protection for the client; and

3. Pays workers compensation or other benefits for the individual who will be providing personal services to the client;

(g) Name of the personal services agency's owner, including anyone with a significant financial interest in the agency;

(h) The procedure for changing or terminating a client's service plan; and

(i) A statement of client rights, which shall include the following:

1. The client has the right to have the client's property treated with respect;

2. The client has the right to request a change in his or her service plan, including the temporary suspension, permanent termination, temporary addition, or permanent addition of a service;

3. The client has the right to file a grievance as described in Section 10 of this administrative regulation regarding services, employee conduct, or the lack of respect for property and not be subject to discrimination or reprisal for filing the grievance; and

4. The client has the right to be free from verbal, physical, and psychological abuse and to be treated with dignity.

(2) A personal services agency shall report to the cabinet an incident of suspected

(a) Abuse, neglect, or exploitation of an adult pursuant to KRS 209.030(2) and (3); or

(b) Child abuse or neglect pursuant to KRS 620.030(1).

Section 9. Service Plan. (1) A personal services agency's manager or the manager's designee shall prepare a service plan. The initial service plan shall:

(a) Be in writing, dated, and signed by the:

1. Individual who prepared it; and
2. Client or client's designated representative;

(b) List the types and schedule of services to be provided to the client; and

(c) Identify the charge per service and total amount that will be billed to the client.

(2)(a) A change in the provision of any service shall be documented in the written service plan.

(b) If a change in services results in a change in the amount billed to the client, the revised service plan shall include an explanation of the new charges to the client and be signed and dated by:

1. The personal services agency employee who documented the change in the plan; and

2. The client or the client's designated representative.

(c) If a change in services does not result in any change in the amount billed to the client, the revised service plan shall not require a second signature by the client or the client's designated representative.

(3) A personal services agency shall provide a copy of the service plan to the client within ten (10) calendar days of the date that:

(a) The agency begins providing initial services; or

(b) A change in the provision of a service is documented in the written service plan.

Section 10. Client Grievances (1) A personal services agency shall investigate a grievance made by a client or the client's designated representative alleging:

(a) An issue with a service that is furnished,

(b) Failure to furnish a service listed in the service plan;

(c) Failure to provide thirty (30) day advance notice of an increase in the amount the agency charges for its services;

(d) Inappropriate conduct of an employee while the individual is providing services to the client; or

(e) A violation of the client's rights.

(2)(a) A personal services agency shall:

1. Document how the agency investigated each grievance; and

2. Maintain on file for a period of at least five (5) years a written record documenting the outcome of the agency's investigation, including any action taken by the agency.

(b) Upon completing an investigation of a grievance, the personal services agency shall document that it notified the individual who reported the grievance of the outcome of the investigation and any action the agency plans to take as a result.

Section 11. Complaint Investigations. (1) The OIG shall investigate a:

(a) Report of any business that provides personal services without receiving certification. A report received prior to December 31, 2009, of a business that provides personal services without certification shall not be accepted for investigation;

(b) Report of any business that markets its services as a personal services agency without receiving certification. A report received prior to December 31, 2009, of a business that markets its services as a personal services agency without certification shall not be accepted for investigation;

(c) Complaint against a certified personal services agency in which the agency is alleged to be in noncompliance with the requirements of this administrative regulation or KRS 216.712;

(d) Complaint against a certified personal services agency in which an agency employee is alleged to have abused or neglected a client, or misappropriated a client's property; or

(e) Complaint against a certified personal services agency in which an agency employee is alleged to have provided services to a client that exceed the scope of personal services or facilitated the self-administration of medication in a manner that fails to comply with the criteria established pursuant Section 1(8) of this administrative regulation.

(2)(a) A certified personal services agency or a business that is the subject of a complaint investigation shall not deny access to a representative of the OIG, after proper identification, to make an inspection for determining compliance with the requirements of this administrative regulation or KRS 216.712.

(b) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the OIG to enter the agency or deny access to records related to an inspection or investigation shall result in revocation of a personal services agency's certification.

Section 12. Request for Additional Information and Plans of

Correction. (1) An entity that applies for initial certification prior to December 31, 2009, shall submit, within sixty (60) calendar days from the date the OIG receives the entity's Application for Certification to Operate a Personal Services Agency, OIG - 1180, documentation that its manager and each employee who provides direct services have submitted to, and completed the

(a) Substance abuse test required by Section 6(2)(c) of this administrative regulation; and

(b) Tuberculosis screening required by Section 6(2)(d) of this administrative regulation.

(2) If an entity fails to submit documentation as required by subsection (1) of this section within sixty (60) calendar days from the date the application is received by the OIG, the application shall be considered incomplete and certification shall not be approved.

(3)(a) The OIG shall notify an applicant or certified personal services agency in writing after:

1. Receipt of an incomplete or illegible application for initial certification or recertification;

2. Receipt of an application for initial certification or recertification in which additional information is needed by the OIG to verify that the applicant or personal services agency is in compliance with the requirements of this administrative regulation and KRS 216.712; or

3. Completion of a complaint investigation pursuant to Section 11 of this administrative regulation.

(b) The OIG's written notification specified in paragraph (a) of this subsection shall request that the applicant or certified personal services agency submit the following within ten (10) calendar days of the date of the notice

1. Additional information needed by the OIG to deem an initial or recertification application as complete or legible. An exemption to the ten (10) day submission requirement shall apply if the personal services agency has been granted a sixty (60) calendar day extension to submit evidence of substance abuse testing or tuberculosis screening in accordance with subsection (1) of this section;

2. Additional information needed by the OIG to make a determination of compliance with the requirements of this administrative regulation and KRS 216.712; or

3. A written plan of correction if the OIG has found upon completion of a complaint investigation that the certified personal services agency is in violation of this administrative regulation or KRS 216.712. A plan of correction shall:

a. Be signed by the personal services agency's owner or manager;

b. Specify the date by which the agency intends to have corrected the violation;

c. Identify the specific measures the agency intends to use to correct the violation; and

d. Identify the specific measures the agency plans to use to ensure the violation will not recur.

(c) The OIG shall review additional information or a written plan of correction submitted pursuant to paragraph (b) of this subsection and notify the applicant or certified personal services agency in writing of the decision to:

1. Approve or not approve an application;

2. Accept or not accept a plan of correction; or

3. Deny or revoke certification for a violation of this administrative regulation or KRS 216.712.

(d) If the OIG determines that a plan of correction is not acceptable and makes a written request for an amended plan of correction, the certified personal services agency shall submit the amended plan of correction within ten (10) calendar days of the date of the OIG's written request. The OIG shall review an amended plan of correction and notify the personal services agency in writing of the decision to:

1. Accept the amended plan of correction;

2. Deny or revoke certification for a violation of this administrative regulation or KRS 216.712; or

3. Require the agency to submit an acceptable plan of correction.

(e) A certified personal services agency that fails to submit an acceptable plan of correction or acceptable amended plan of correction shall have its certification revoked

(4) The OIG may impose fines in accordance with KRS 216.714(1) or (2).

Section 13. Denial and Revocation (1) Initial certification shall be denied if an applicant:

(a) Has a significant financial interest in the entity applying for certification and held a significant financial interest in a personal services agency or health facility licensed pursuant to KRS Chapter 216B in which the agency's certification or facility's licensure was revoked during the three (3) years immediately preceding the filing of the application;

(b) Knowingly misrepresents or submits false information on the application; or

(c) Submits an application which fails to validate the entity's compliance with the requirements of this administrative regulation and KRS 216.712.

(2) Certification shall be revoked if a personal services agency:

(a) Fails to apply for annual recertification pursuant to Section 4(1) of this administrative regulation;

(b) Knowingly misrepresents or submits false information on the application at the time of annual recertification;

(c) Submits an application for annual recertification which fails to validate the agency's compliance with the requirements of this administrative regulation and KRS 216.712;

(d) Fails to comply with the background check and employment requirements of Section 6(2), (3), and (4) of this administrative regulation;

(e) Knowingly retains an employee who is:

1. Found by the cabinet to have abused or misappropriated a client's property; or

2. Convicted of, or pleads guilty, to a crime as defined by KRS 216.710(3);

(f) Fails to submit an acceptable plan of correction or acceptable amended plan of correction pursuant to Section 12(3)(b)2 or (d) of this administrative regulation;

(g) Interferes with a cabinet representative's ability to perform an official duty; or

(h) Provides services that are beyond the scope of personal services as defined by KRS 216.710(7).

(3) Written notice of adverse action shall be provided at least thirty (30) calendar days prior to the effective date of the denial or revocation.

(4) The adverse action notice shall:

(a) Explain the reason for the denial or revocation of certification;

(b) Specify that the personal services agency shall cease operation prior to the effective date of the adverse action;

(c) Advise the personal services agency of the right to request an appeal prior to the effective date of the adverse action;

(d) Specify that denial or revocation shall be stayed if an appeal is requested; and

(e) Require the agency to surrender the certificate of operation to OIG when the denial or revocation becomes effective.

Section 14. Closure of a Personal Services Agency. If a personal services agency closes voluntarily or as the result of adverse action, the agency shall relinquish to the OIG its certificate to operate as a personal services agency immediately after the effective date of the closure.

Section 15. Appeals. (1) A personal services agency that submits a written request for appeal within thirty (30) calendar days of the date the agency receives a notice of adverse action shall be afforded a hearing in accordance with KRS Chapter 13B

(2) If a hearing officer's final order does not uphold revocation of certification, the personal services agency may resume providing personal services.

Section 16. Incorporation by Reference. (1) "OIG - 1180, Application for Certification to Operate a Personal Services Agency", edition November 2009, is incorporated by reference:

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through

Friday, 8 a.m. to 4:30 p.m.

KERRY HARVEY, Esq., Acting Inspector General  
JANIE MILLER, Secretary

APPROVED BY AGENCY: November 6, 2009

FILED WITH LRC: November 13, 2009 at 9 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275  
East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502)  
564-7905, fax (502) 564-7573.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, 502-564-2888

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes standards for the certification of personal services agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the certification of personal services agencies as mandated by the passage of SB 22 from the 2009 GA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216.710 - 216.716 by establishing standards for the certification of personal services agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting forth the certification requirements for personal services agencies.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation, required by SB 22 from the 2009 GA.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation, required by SB 22 from the 2009 GA.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation, required by SB 22 from the 2009 GA.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation, required by SB 22 from the 2009 GA.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect any entity that applies for certification as a personal services agency.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities interested in obtaining certification as a personal services agency will be required to submit an application to the Office of Inspector General (OIG). Upon approval by the OIG, certified personal services agency staff will be required to submit to the following: criminal record checks at the time of initial hire and annually; a check of the nurse aide and home health aide abuse registry at the time of initial hire and annually; a substance abuse test at the time of initial hire; and tuberculosis screening at the time of initial hire and annually. Personal services agencies will be required to provide training to staff and evaluate employee competency. Personal services agencies will also be required to maintain written service plans with clients. (Service plans include the types and schedule of services provided to the client, and the charge per service including the total amount billed to the client.) Personal services agencies will be required to conduct internal investigations of certain grievances made by clients, such as alleged failure to furnish a service listed in the service plan, alleged inappropriate employee conduct, or an allegation that a client's rights have been violated by staff. Additionally, personal services agencies will be subject to on-site inspection by the OIG

only upon receipt of a complaint alleging the following: noncompliance with the requirements of this administrative regulation or KRS 216.712; possible abuse or neglect of a client, or misappropriation of a client's property by a personal services agency employee; or complaint that an employee has provided services to a client that exceed the scope of personal services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An applicant for initial certification as a personal services agency will be required to pay an initial application fee of \$500 and an annual recertification fee of \$350 annually thereafter. A fee of \$350 will be imposed for a change in an ownership interest of more than 25% of the personal services agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As mandated by SB 22 from the 2009 GA, an entity that demonstrates compliance with this administrative regulation will be approved for certification as a personal services agency.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cabinet anticipates that it will cost approximately \$35,100 during the first year of implementation of the personal services agency certification program. This figure was based on several factors including the number of hours the Office of Inspector General anticipates its survey staff may spend investigating complaints, the number of hours needed for staff to review and process initial certification applications, annual recertification applications, and change of ownership applications, supervisory review, technical assistance, travel costs, postage and supplies, and other indirect costs.

(b) On a continuing basis: Approximately \$35,100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation includes the Kentucky personal services agency fund, which is created by KRS 216.716 and made up of certification fees and fines collected pursuant to KRS 216.712 and 216.714.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation establishes an initial certification fee of \$500 and an annual recertification fee of \$350. A fee of \$350 will be imposed for a change in an ownership interest of more than 25% of the personal services agency.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial certification fee of \$500 and an annual recertification fee of \$350. A fee of \$350 will be imposed for a change in an ownership interest of more than twenty-five (25) percent of the personal services agency.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? An entity seeking certification to operate a personal services agency.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.710 - 216.716.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Cabinet

anticipates collecting approximately \$37,500 in fees during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Cabinet anticipates collecting approximately \$30,000 in fees during subsequent years.

(c) How much will it cost to administer this program for the first year? The Cabinet anticipates that it will cost approximately \$35,100 during the first year of implementation of the certification program for personal services agencies.

(d) How much will it cost to administer this program for subsequent years? Approximately \$35,100.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 921 KAR 2:017E

The proposed emergency administrative regulation, 921 KAR 2:017E, Kentucky Work supportive services, is necessary to remove barriers for participants in required work activities under the Kentucky Works Program (KWP). In accordance with KRS 13A.190(a)1, the emergency administrative regulation will enhance the welfare of KWP participants and the state's economy by increasing supportive services related to transportation and car repairs to reflect actual costs realized by the participants. The increase in supportive services will combine with other benefits to give incentive to participants to retain and sustain employment, and will protect and create jobs through improved accessibility, job stability, and reduction in public assistance dependency. In addition, States are subject to overall participation rates under their Temporary Assistance for Needy Families Block Grant (TANF) under Title IV-A of the Social Security Act. The increases in supportive services included in this emergency administrative regulation will align with other efforts to support Kentucky's overall participation rate for federal funding. An ordinary administrative regulation would not allow the agency sufficient time to implement changes necessary to address immediate needs of KWP participants and adequately support compliance with the overall state-wide participation rate required under federal funding. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency regulation.

STEVEN L. BESHEAR, Governor  
JANIE MILLER, Secretary

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Emergency Amendment)

#### 921 KAR 2:017E. Kentucky Works supportive services.

RELATES TO: KRS 45.237-241, 205.200, 205.211, 205.2003, 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.2003(1), 42 U.S.C. 601-619

EFFECTIVE: November 2, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the public assistance programs. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the

conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations. KRS 205.2003(1) requires the cabinet to promulgate administrative regulations to develop a work program for recipients of public assistance to provide for immediate employment or preparation for employment, and to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation establishes requirements for receiving Kentucky Works supportive services.

Section 1. Definitions. (1) "Approved Kentucky Works activity" means participation in an allowable activity in accordance with 921 KAR 2:370, Section 2(1)(c)(2)(e)(i).

(2) "Component" means a service or activity in accordance with 921 KAR 2:370, Section 2(1)(c)(2)(e)(i).

(3) "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement, in accordance with 921 KAR 2:370, and referral for removal of barriers takes place.

(4) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(5) "Improper payment" is defined by KRS 45.237(1)(d).

(6) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's "Temporary Assistance for Needy Families" or "TANF" money payment program for a child as defined in 921 KAR 2:006.

(7) "Kentucky Works" means a program, in accordance with 921 KAR 2:370, that assists a recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(8) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(9) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(10) "Work-eligible individual" is defined by 45 C.F.R. 261.2(n).

Section 2. Kentucky Works Participation and Supportive Services Payment. The cabinet shall make a payment for a supportive service cost:

(1) For an individual participating in the Kentucky Works Program, except for the exclusions listed in Section 12 of this administrative regulation;

(2) Necessary for participation in an approved Kentucky Works activity; and

(3) To the extent funds are available.

Section 3. Transportation. Transportation reimbursement shall be paid in the following situations:

(1) Precomponent;

(2) Component preparation; or

(3) Component participation.

Section 4. Transportation Payment Amount and Authorization.

(1)(a) To the extent funds are available, payment for transportation shall be provided for an individual participating in an approved Kentucky Works activity, if:

1. Free transportation that meets the needs of the work-eligible individual is unavailable; and

2. The individual is required to incur a transportation expense in order to participate.

(b) If a need for transportation reimbursement for four (4) days or more is determined, a direct payment of \$200 per month to the individual shall be made through the System Tracking for Employment Program or "STEP".

(c) If a need for transportation reimbursement for less than four (4) days is determined, a payment of fifteen (15) dollars to the individual shall be made through the System Tracking for Employment Program or "STEP", as follows:

1- Fifteen (15) dollars for less than four (4) days per month;

2- Sixty (60) dollars for four (4) to sixteen (16) days per month; or

3- 100 dollars for seventeen (17) or more days per month.]

(d) A payment shall be issued in accordance with 921 KAR 2:050.

(3) In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, a transportation payment shall be provided for the period of up to:

- (a) Two (2) weeks prior to the scheduled start of component activity; and
- (b) One (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 5. Restriction on Authorization of a Transportation Payment. A transportation payment shall not be made if the work-eligible individual is not in compliance with a Kentucky Works activity, in accordance with 921 KAR 2:370.

Section 6. Other Supportive Services. (1) To the extent funds are available, the cabinet shall provide other supportive services to a work-eligible individual if necessary for the individual's participation in the approved Kentucky Works activity ~~for~~ef:

- (a) Component preparation;
- (b) Component participation while the K-TAP case remains active; or
- (c) Acceptance of a new job or retention of an existing one if the parent or other adult:

- 1. Has accepted employment and a start date of employment is provided, except if an item is required as a condition of being hired by the employer; or
- 2. Is employed.

(2) If requirements of subsection (1) of this section are met, the cabinet may approve an item or service needed by the work-eligible individual for participation in a Kentucky Works activity, such as:

- (a) A drug screening test fee;
- (b) Up to three (3) uniforms for employment, if not reimbursable by the employer;
- (c) One (1) suitable interview outfit for preemployment purposes;
- (d) Required clothing or shoes particular to a service, profession, or company, if not reimbursable by the employer;
- (e) School supplies and books;
- (f) A licensing fee which includes:

- 1. Exam costs required to obtain a professional license or certificate; or
- 2. Driver's license fee;
- (g) A timepiece necessary for employment or training;
- (h) The cost to have a photo identification;
- (i) The cost of a criminal records check fee, if required by the provider or employer;
- (j) A driver's education class fee; or
- (k) Tools required for employment.

(3) Payment for other supportive services shall be limited to a cumulative total of \$400 per individual in a twelve (12) month period, beginning with the first day of the month in which the initial payment is issued.

(4) A penalized or sanctioned work-eligible individual shall not be eligible for other supportive services.

(5) A retroactive payment for other supportive services shall not be made for an item purchased by a penalized or sanctioned work-eligible individual who later cures the penalty. After the individual cures the penalty or sanction, an eligible expense may be authorized.

(6) Except in accordance with Section 7 of this administrative regulation, a medical service or item shall not be an allowable supportive service.

Section 7. Allowable Medical Service or Item. To the extent non-TANF funding is available, the purchase of the following item or service shall be allowed for a work-eligible individual, if needed for participation in the Kentucky Works activity and not reimbursable through Medicaid and limited to:

- (1) Eyeglasses or corrective lens;
- (2) Dentures;
- (3) Hearing aids; and
- (4) Medical service or item required as a condition of employment.

Section 8. Car Repairs. (1) If a free service for car repairs, including a vocational school automotive program, is unavailable that meets the needs of the work-eligible individual, a car repair expenditure shall be provided, to the extent funds are available, if necessary for participation in the approved Kentucky Works activity of:

- (a) Component preparation; or
- (b) Component participation, including employment while the K-TAP case remains active.

(2) Car repair expense shall meet the following criteria to be considered for payment:

- (a) Car repair that makes the car functional;
- (b) Property tax on the vehicle;
- (c) Vehicle registration;
- (d) Licenses fee;
- (e) Liability insurance to drive a vehicle;
- (f) New or used automotive part to be purchased by the work-eligible individual to make the car functional; and
- (g) Other car expense needed by the work-eligible individual that would allow participation in the Kentucky Works activity.

(3) Prior to the approval of a car repair expenditure listed in subsection (2) of this section, the work-eligible individual shall provide an estimate of the cost.

(4) Auto repair work shall:

- (a) Be completed by a garage, unless the repair is completed by a vocational school automotive program; or
- (b) Be the responsibility of the work-eligible individual if a payment is made for a new or used automotive part as specified in subsection (2)(f) of this section.

(5) Prior to approval of a car repair expenditure, the cabinet shall verify the work-eligible individual owns the vehicle.

(6) The restrictions on authorization and verification of a supportive service payment described in Section 12 of this administrative regulation shall apply to a car repair expense and payment.

(7) Payment for car repairs shall be limited to a cumulative total of \$1,500 ~~(\$500)~~ per eligible family during a twelve (12) month period, beginning with the first day of the month in which the initial payment is issued.

Section 9. Short-term Training. To the extent funds are available, a fee for a short-term training program shall be eligible for payment for a work-eligible individual if the training program is:

- (1) Not eligible for federal financial aid; and
- (2) Likely to lead to paid employment, in accordance with:
  - (a) The work-eligible individual's transitional assistance agreement; and
  - (b) 921 KAR 2:370.

Section 10. Required Fees. (1) To the extent funds are available, the following payment may be made for a work-eligible individual in compliance with Kentucky Works requirements

- (a) A training registration fee;
  - (b) Financial aid application fee;
  - (c) Testing fee;
  - (d) Application fee required by a vocational school for a specified program;
  - (e) Liability insurance fee;
  - (f) Copy of records fee;
  - (g) Activity fee if mandated by the institution; or
  - (h) Other required fee.
- (2) Required fees shall not exceed \$200 per payment.

Section 11. Educational Bonus. (1) An educational bonus of \$250 per individual shall be paid to a K-TAP adult or child who reports and verifies:

- (a) Receiving a:
    - 1. High school diploma;
    - 2. GED certificate; or
    - 3. Postsecondary school certificate or degree; or
  - (b) Graduating from English as a second language class.
- (2) A short-term training program shall not qualify for postsecondary education.
- (3) A K-TAP adult or child shall be limited to only one (1) payment for:



- (a) Receiving a postsecondary certificate or degree; or
- (b) Graduating from an English as a second language class.
- (4) A K-TAP adult or child shall earn the diploma, certificate, or degree while receiving K-TAP.

(5) A K-TAP applicant or recipient shall be advised of the educational bonus and be reminded of available work incentives:

- (a) During application;
- (b) At recertification; and
- (c) Through periodic mailings.

Section 12. Restrictions on Authorization of Supportive Service Payments. (1)(a) To verify an expense and authorize a supportive service payment, except as provided in Section 5 of this administrative regulation, a PA-32, Authorization for Supportive Services Payments, shall be completed.

(b) PA-32, Authorization for Supportive Services Payments, shall be valid for thirty (30) calendar days from the date issued by the cabinet.

(2) A payment shall not be made for the period during which:

(a) A valid PA-32, Authorization for Supportive Services Payment, is not returned; or

(b) The work-eligible individual is:

- 1. Penalized for noncompliance with a Kentucky Works activity, as specified in 921 KAR 2:370; or
- 2. Ineligible.

(3) A supportive service payment shall be issued in accordance with 921 KAR 2:050.

Section 13. Hearings and Appeals. An applicant or recipient of supportive services who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing in accordance with 921 KAR 2:055.

Section 14. Improper Payments. The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 15. Incorporation by Reference. (1) "PA-32, Authorization for Supportive Services Payments", edition 11/09/2409, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 23, 2009

FILED WITH LRC: November 2, 2009

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the types and financial limitations on supportive services for Kentucky Works Program (KWP) participants.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform conditions and requirements regarding the payment of KWP supportive services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.002 requires the Cabinet for Health and Family Services to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation establishes the requirements and payment maximums for KWP support services. KWP is the work program under the Kentucky Temporary Assistance Program (K-TAP), the assistance program funded by the Temporary Assistance for Needy Families (TANF)

block grant authorized by 42 U.S.C. 601-619 or Title IV-A of the Social Security Act. This administrative regulation establishes supportive services in conformity with the Title IV-A State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of eligibility criteria and financial limitations for all KWP supportive services, including transportation, other supportive services, allowable medical services or items, car repairs, short-term training, required fees and educational bonuses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to increase supportive services for car repairs from a cumulative total of \$500 to \$1,500 per eligible family during a twelve month period, beginning with the first day of the month in which the initial payment is issued. This amendment increases the payment for transportation expenses for four (4) or more days per month to \$200 per month. Additionally, this amendment clarifies that K-TAP adults or children shall receive only one educational bonus for a postsecondary education certificate or degree and only one bonus for completing an English as a Second Language class.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure KWP participants have transportation needs met for the purposes of gaining and retaining employment and self-sufficiency. The increase in transportation payments is necessary to offset the increased costs of gasoline and assist in removing transportation as a barrier to participation in the Kentucky Works Program. The maximum amount allotted for a car repair did not adequately meet the actual costs realized by KWP participants. In addition, the amendment is necessary to clarify payment policy for educational bonuses. The increase in supportive services will combine with other benefits to give incentive to participants to retain and sustain employment; will align with other efforts to support Kentucky's overall participation rate for federal funding; and will protect and create jobs through improved accessibility, job stability, and reduction in public assistance dependency.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this regulation conforms to KRS 205.2003(3) by prescribing the types and conditions for supportive services to assist in the pursuit of work and self-sufficiency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through its refinement of the types and financial limitation of supportive services to foster work and self-sufficiency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP and are required to participate in a KWP activity. As of August 2009, there were 23,484 K-TAP families of which 9,014 recipients were required to participate in KWP.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require no additional action by participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no cost to KWP participants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky Works Program participants will benefit from the increase in supportive services, which will enable the participants to meet the actual costs of car repairs and transportation expenses, and promote work and their self-sufficiency. In addition, K-TAP recipients and KWP participants will



have clearer instructions as to when an educational bonus may be requested.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation will result in a projected net increase of \$4,180,000 for supportive services the remainder of this fiscal year.

(b) On a continuing basis: The amendment to this administrative regulation will result in a projected net increase of \$8,360,000 for supportive services each year thereafter.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A or TANF and General Funds used to meet Maintenance of Effort requirements are the funding sources for this administrative regulation. Kentucky has not fully expended its federal Title IV-A or TANF dollars. This amendment will be within the existing federal Title IV-A or TANF allocation. No new funding for its first year or subsequent years is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. There is no increase in fees or funding required. This amendment will be within the existing federal allocation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied since application of policy is applied in a like manner statewide

ber 1996 and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Kentucky Works Program (KWP) has been operational since October 1996 and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? The KWP program has been operational since October 1996. The amendment to this administrative regulation will result in a projected net increase of \$4,180,000 for supportive services for the remainder of this fiscal year and \$8,360,000 each year thereafter. Kentucky has not fully expended its federal Title IV-A or TANF dollars. This amendment will be within the existing federal Title IV-A or TANF allocation. No new funding for its first year or subsequent years is required.

(d) How much will it cost to administer this program for subsequent years? Please refer to the response in item (c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.200(2), 205.2003(1),

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This question is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), KRS 45.237-241, KRS 205.200, 205.211, 205.2003, 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not directly generate any revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Kentucky Works Program (KWP) has been operational since Octo-

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

PERSONNEL CABINET  
Office of the Secretary  
(As Amended at ARRS, November 10, 2009)

101 KAR 2:210. 2010[2009] Plan Year Handbook for the  
Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254  
STATUTORY AUTHORITY: KRS 18A.030(2)(b),  
18A.2254(1)(a)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS  
18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to  
promulgate an administrative regulation to incorporate by reference  
the plan year handbook distributed by the Department of Employee  
Insurance to public employees covered under the self-insured plan  
and establishes the minimum requirements for the information  
included in the handbook. This administrative regulation incorpo-  
rates by reference the plan year[handbook and a] Benefits Selection  
Guide, which is the handbook distributed by the depart-  
ment to public employees for the 2010 Plan Year as required  
by KRS 18A.2254(1)(a)1[a simplified version of the larger hand-  
book].

Section 1. The Department of Employee Insurance shall  
distribute or make available to the public employees covered  
under the self-insured plan the 2010 Plan Year Kentucky Em-  
ployees' Health Plan Benefits Selection Guide, which shall  
include the premiums, employee contributions, and a sum-  
mary of benefits, copays, coinsurance, and deductibles for  
each plan provided to public employees covered und the self-  
insured plan.

Section 2. Incorporation by Reference. (1) "2010 Plan Year  
Kentucky Employees' Health Plan Benefits Selection Guide",  
2010 edition, is incorporated by reference[Public Employee  
Health Insurance Program, Benefits Selection Guide, 2010 Edition]  
[The following material][is incorporated by reference]:

(a) 2009 Plan Year Public Employee Health Insurance Pro-  
gram Handbook]

(2) This material may be inspected, copied, or obtained, sub-  
ject to applicable copyright law, at the Personnel Cabinet, 501 High  
Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through  
Friday, 8 a.m. to 4:30 p.m.

NIKKI JACKSON, Secretary

APPROVED BY AGENCY: September 15, 2009

FILED WITH LRC: September 15, 2009 at 10 a.m.

CONTACT PERSON: Joe R. Cowles, Office of Legal Services,  
501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502)  
564-7430, fax (502) 564-7603.

KENTUCKY BOARD OF CHIROPRACTIC EXAMINERS  
(As Amended at ARRS, November 10, 2009)

201 KAR 21:041. Licensing; standards, fees.

RELATES TO: KRS 312.085, 312.095, 312.145, 312.175[  
312.145]

STATUTORY AUTHORITY: KRS 312.019, 312.085, 312.095,  
312.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS  
312.019(9) authorizes the Kentucky Board of Chiropractic Examin-  
ers to promulgate administrative regulations consistent with KRS  
Chapter 312, regulating the practice of chiropractic. This admin-  
istrative regulation establishes the procedures relating to applica-  
tion for licensure, license renewal, and fees.

Section 1. Initial Application. An applicant for Initial licen-  
sure shall submit to the board:

(1) A completed New Licensee Application; and  
(2) A nonrefundable application fee of \$350.[Initial Applica-  
tion Fee. With the application submission, a nonrefundable applica-  
tion fee in the amount of \$350 shall be paid to the board.]

Section 2. Licenses (1) Each license by the board shall:

(a) Set forth:

1. The name of the issuing board;

2. The name of the licensee;

3. The number of license; and

4. The date of the license issuance;

(b) Be signed by a minimum of three (3) members of the  
board; and

(c) Have the seal of the board affixed.[Licenses issued by  
the board shall set forth the name of the issuing board, the name of  
the licensee, the number of the license, the date of the license  
issuance, and shall be signed by a minimum of three (3) members  
of the board and have the seal of the board affixed.]

(2) All members of the board shall be given the opportunity to  
sign each license.

Section 3. License Renewal. (1)(a) Each licensee of the board  
shall:

1. Annually renew the[his] license on or before the first day of  
March; and

2. Submit the[his] application for license renewal to the board  
as required by paragraph (b) of this subsection[on the forms  
provided by the board].

(b)1. A licensee seeking active status shall:

a. Submit a completed Application for Annual License  
Renewal; and

b. Pay a renewal fee of \$250.

2. A licensee seeking inactive status shall:

a. Submit a completed Annual Inactive/Non-Resident Re-  
newal Application; and

b. Pay a renewal fee of seventy-five (75) dollars.[1. With the  
application, a licensee seeking active status shall pay a renewal  
fee of \$250-

2. An inactive licensee shall pay a renewal fee of seventy-five  
(75) dollars-]

(c) The amount of the restoration fee established by KRS  
312.175(2) and (4) shall be \$250 per year, or any part of a  
year.[The restoration fee for nonrenewal of licensure in accor-  
dance with KRS 312.175(2)-(4) shall be \$250-1]

(d) Continuing education requirements.

1. Each licensee shall complete twelve (12) hours of  
board- approved continuing education, with:

a. A minimum of six (6) hours obtained within Kentucky;

b. No more than eight (8) hours completed in a day; and

c. Proof of completion submitted with the renewal applica-  
tion.

2. A new licensee shall complete a two (2) hour jurispru-  
dence course, provided by the board, prior to the first license  
renewal. The course shall account for two (2) of the twelve (12)  
hours of continuing education required by subparagraph 1 of  
this paragraph.[1. New licensees shall complete a two (2) hour  
jurisprudence course prior to their first license renewal.

2. Proof of attendance of at least twelve (12) hours of board  
approved continuing education shall be submitted with the renewal  
application.

3. The jurisprudence course shall account for two (2) of the  
twelve (12) hours of continuing education required for annual li-  
cense renewal.

(2) The continuing education program shall be ei-  
ther[educational program shall meet one (1) or more of the follow-

ing minimum requirements]:

(a) A post graduate course of study at or sponsored by a chiropractic college accredited by the Council on Chiropractic Education or its successors; or

(b) A continuing education[4. An educational] program approved by the board, or a committee designated by the board to act between sessions of the board.

**1. The continuing education program shall be:**

a. [2.a. To be considered, the educational program shall be] Sponsored by a national or state chartered organization of chiropractors; and

b. Open to all doctors of chiropractic in Kentucky who desire to attend.

2. [b.] The instructors and speakers shall be in the field of chiropractic, chiropractic education, or allied sciences[recognized to have a national reputation in the field of chiropractic education or allied sciences or they shall be generally recognized as having a high degree of skill in the field of instruction].

3. [e.] The programs to be presented shall contain subjects of clinical[significant] benefit to licensees and on a postgraduate level of education [c] Six (6) hours of the required twelve (12) hours for relicensure shall be obtained within the state of Kentucky.

(d) A maximum of eight (8) hours of continuing education hours may be obtained in one (1) day.]

(3) The sponsoring party of a proposed educational program for license renewal shall apply for approval of the program prior to its presentation by providing the following information to the board:

(a) The name of the course;

(b) The name of the sponsoring organization;

(c) The objective of the program;

(d) The number of hours over which the educational program will be presented and the dates presented;

(e) The names of the instructors and speakers and the name and address of the institution with which they are associated, if applicable;

(f) The instructors' or speakers' educational background and other relevant qualifications; and

(g) The name and address of the person authorized to certify attendance.

(4) The educational program may be monitored by an officer of the board, the field coordinator of the board, or a person designated by the president of the board[~~to determine compliance with subsection (3) of this section.~~].

(5)(a) A proposed program shall be submitted to the board for approval at least sixty (60) days prior to the date of the presentation.

(b) The board, or a designee of the board to act between meetings of the board, shall give written notification of the board's approval or disapproval of the program to the sponsoring party not more[less] than thirty (30) days after receiving the proposed educational program.

(c) Within thirty (30) days of completion of the program, the sponsoring party shall submit to the board a written certification of:

**1. The names and license numbers of the licensees in attendance at the program;**

**2. The sessions attended by each licensee; and**

**3. The number of hours of each session attended**[the licensees in attendance at the program, the sessions attended by each, and the number of hours of each session attended.]

(6)(a) If the licensee is in active practice but is not in active practice in Kentucky and does not intend to practice in Kentucky during the renewal period, the licensee[he] shall meet the educational requirements of the state or jurisdiction in which the licensee[he] is practicing.

(b) To activate an inactive license, a licensee who has been in active practice outside Kentucky shall submit:

**1. A completed Application for Activation/Reinstatement of Kentucky License;**

**2. The renewal fee required by subsection (1)(b) of this section;**

**3. Proof that the licensee has met the continuing education requirements established by the state or jurisdiction in which the licensee has been engaged in active practice; and**

**4. License verification from each state or jurisdiction from which the licensee has held a license.**

(7)(a) An inactive licensee, who is not in active practice outside Kentucky, may renew the inactive license without meeting the continuing education requirements required by Section 3(1)(d)1 of the administrative regulation.]

(b) To activate an inactive license, the licensee shall submit:

**1. A completed Application for Activation/Reinstatement of Kentucky License;**

**2. The renewal fee required by subsection (1)(b) of this section;**

**3. Proof that the licensee has obtained twelve (12) hours of continuing education credit for each year the license was inactive; and**

**4. If the licensee was inactive for more than four (4) years, proof of successfully passing the Special Purposes Examination for Chiropractic given by the National Board of Chiropractic Examiners**[shall affirm that the requirements have been met, and shall furnish proof of compliance if requested by the board].

(7) If the licensee is not in active practice, his license may be renewed, with the inactive status being noted, without satisfying the educational requirements, but before the licensee may again be licensed to engage in the active practice of chiropractic, he shall meet the educational requirements prescribed by the board after a review of the licensee's verified resume of education and experience and shall satisfactorily pass an examination for clinical competency as may be prescribed by the board].

Section 4. Change of Address. Each licensee shall notify the board within ten (10) days of each change of mailing address or place of business.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "New Licensee Application", **November 2009**[2006];

(b) "Application for Annual License Renewal", **November 2009**[2006];

(c) "Annual Inactive/Non-Resident License Renewal Application", **2009**[2007]; and

(d) "Application for Activation/Reinstatement of Kentucky License", **2007**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky 42142, Monday through Friday, 8 a.m. to 4:30 p.m.

KARALEE OLDENKAMP, Executive Director

APPROVED BY AGENCY: September 10, 2009

FILED WITH LRC: September 15, 2009 at 11 a.m.

CONTACT PERSON: Karalee Oldenkamp, D.C., Executive Director, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784.

GENERAL GOVERNMENT CABINET  
Board of Social Work  
(As Amended at ARRS, November 10, 2009)

**201 KAR 23:075. Continuing education.**

RELATES TO: KRS 335.130(4)

STATUTORY AUTHORITY: KRS 335.070(3), (6), 335.130[(4)]  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means a social work course, at the graduate level:

- (a) Designated by a social work title or content; or
- (b) An academic course, at the graduate level, relevant to social work.

(2) "Approved" means recognized by the Kentucky Board of Social Work.

(3) "Continuing education hour" means fifty (50) clock minutes of participation~~[participating]~~ in continuing educational programs~~[experiences]~~.

(4) "Program" means an organized educational~~[learning]~~ experience:

- (a) Planned and evaluated to meet behavioral objectives; and
- (b) Presented in one (1) session or series.

(5) "Provider" means a person or an organization approved by the Kentucky Board of Social Work to provide a single ~~[for providing]~~ continuing education program~~[programs]~~.

(6) "Relevant" means having content applicable to the practice of social work.

(7) "Sponsor" means a person or an organization approved by the Kentucky Board of Social Work to provide more than one (1) continuing education program over the course of a year.

Section 2. Accrual and Computation of Continuing Education Hours. (1) A minimum of thirty (30) continuing education hours shall be accrued by each licensed clinical social worker and certified social worker holding licensure during the three (3) year period for renewal.

(2) A minimum of fifteen (15) continuing education hours shall be accrued by each licensed social worker holding licensure during the three (3) year period for renewal.

(3) All continuing education hours shall be in or relevant to the licensee's level of licensure.

(4) Three (3) continuing education hours during each renewal period shall be acquired in the area of the social work code of ethics as established~~[codified]~~ in 201 KAR 23:080.

(5) Every third renewal period, two (2) of the continuing education hours shall be on HIV/AIDS courses approved by the Cabinet for Health and Family Services pursuant to KRS 214.610 [902-KAR 2-160].

(6) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of the licensee. The hours~~[They]~~ may be earned by completing any of the following education programs~~[activities]~~:

(1) Programs not requiring board review and approval. Except for courses on ethics which are provided to meet the requirements of Section 2(4) of this administrative regulation, an educational program from any of the following providers shall be deemed to be relevant to the practice of social work and shall be approved without further review by the board if it is:

(a) Sponsored or approved by:

- 1. The National Association of Social Workers or any of its affiliated state chapters; or
- 2. The Association of Social Work Boards.

(b) Sponsored by:

- 1. The National Federation of Clinical Social Workers or any of its affiliated state chapters;
- 2. The American Psychological Association or any of its affiliated state chapters;
- 3. The American Counseling Association or any of its affiliated state chapters;
- 4. The National Board for Certified Counselors or any of its affiliated state chapters; and
- 5. The American Psychiatric Association or any of its affiliated state chapters.

(c) An academic course offered by an accredited postsecondary institution directly related to social work, counseling, or psychology.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if it is relevant and therefore subsequently approved by the

board.

(a) Relevant programs, including home study, distance learning or teleconference courses, and in-service training provided by other organizations, educational institutions, or other service providers approved by the board.

1. Board approval for home study, distance learning and teleconference courses shall be obtained each year unless the program does not require board approval under subsection (1) of this section.

2. The combined total number of hours for home study, distance learning or teleconference courses shall not exceed one-half (1/2) of the individual's continuing education hours.

3. Courses on the board's code of ethics which are taken to meet the requirements of Section 2(4) of this administrative regulation shall be attended in person before a live presenter, and shall not be taken through home study, distance learning or teleconference courses.

(b) Relevant programs or academic courses presented by the licensee. A presenter of relevant programs or academic courses shall earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course.

(c) Authoring an article in a relevant, professionally recognized or juried publication. Credit shall not be granted unless an article was published within the one (1) year period immediately preceding the renewal date. A licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal under the provisions of this subsection. More than one (1) publication shall not be counted during each renewal period.

(d) Courses on ethics required by Section 2(4) of this administrative regulation shall be submitted to the board for approval and shall not be automatically approved under Section 3(1)(a) of this administrative regulation.

Section 4. Procedures for Approval of Continuing Education Providers and Programs. A program, which is offered by a provider ~~[an entity that is not a provider]~~, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review these programs, the following information shall be submitted:

(1) A published course outline or similar description which includes an explanation of the course objectives;

(2) Names and qualifications of the instructors presented in the form of curriculum vitas or resumes;

(3) Copies of the evaluation sheet or instrument by which the attendees can comment on the program, and the program agenda indicating hours of education, including all~~[coffee and lunch]~~ breaks;

(4) Number of continuing education hours requested and a statement whether the provider is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation;

(5) Official certificate of completion or college transcript from the sponsoring agency or college; and

(6) Application for continuing education credits approval submitted on the Application for Continuing Education Credit Approval.

(7)(a) The board may approve a specific continuing education program if the provider of the program:

1. Files a written request for approval;

2. Pays an application fee of \$100~~(\$100)~~dollars for each one day program of eight (8) hours or less; and

3. Provides information about each continuing education program that it proposes to present which meets the requirements established in subsections (1) through (6) of this section

(b) The approval of a program pursuant to this section shall permit the provider to offer the program for one (1) year

(c) The provider shall submit a request for renewal and a fifty (50) dollar renewal fee for each subsequent request to offer the same approved program.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any sponsor ~~[entity]~~ seeking to obtain approval of a continuing education program

prior to its offering shall:

(a) Apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 4(1) through (6) of this administrative regulation.

(b) Provide proof to the board that the sponsor [entity] seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in subsection (2) of this section; and

2. Does not exclude any licensee from its programs.

(2) A continuing education programs[activity] shall be qualified for approval if the board determines that the program[the activity] being presented:

(a) Is relevant to the practice of social work;

(b) Contributes to the professional competency of the licensee; and

(c) Has competent instructors with appropriate academic training, professional license[licensee] or certification, or professionally recognized experience.

(3) The sponsor[provider] shall specify whether it is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation.

(4)(a) The board may approve an organization that is not listed in Section 3(1) of this administrative regulation as a sponsor of continuing education for a twelve (12) month period if the organization:

1. Files a written request for approval;

2. Pays an initial application fee of \$250[250 dollars];

3. Proposes to sponsor continuing education programs that meet[meets] the requirements established in Section 3 of this administrative regulation; and

4. The board shall periodically review the programs that a sponsor has provided to determine if the sponsor continues to meet the requirements of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a 150 renewal fee annually and notifying the board that the original information required in this section remains current.

Section 6. (1) A licensee or a certificate holder may request an individual review of a continuing education program[activity] that was otherwise not approved if it was completed during the appropriate time period[request] if the individual has:

(a) Made a timely request by applying for individual review; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on the standards for continuing education established by this administrative regulation.

(3) Approval by the board of a continuing education program[activity] under this section shall

(a) Qualify as if it has been obtained from an approved provider; and

(b) Be limited to the particular offering upon which the request for individual review is based.

Section 7.[6-] Responsibilities and Reporting Requirements of Licensees. Each licensee shall be responsible for obtaining required continuing education hours. The licensee[He] shall identify his or her own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding licensure shall:

(1) Select approved programs[activities] by which to earn continuing education hours;

(2) Submit to the board, when applicable, a request for continuing education programs[activities] requiring approval by the board as established in Section 4 of this administrative regulation;

(3) Maintain the licensee's own records of continuing education hours;

(4) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(5) Furnish documentation of attendance and participation in

the appropriate number of continuing education hours at the time of his or her renewal, as follows:

(a) Each person holding licensure shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours;

(b) In each calendar year, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period;

(c) Verification of continuing education hours shall not otherwise be reported to the board;

(d) Documentation sent in to the board prior to renewal shall be returned to the licensee by regular mail;

(e) Documentation shall take the form of official documents including:

1. Transcripts;

2. Certificates;

3. Affidavits signed by instructors; or

4. Receipts for fees paid to the sponsor; and

(f) Each licensee shall retain copies of his or her documentation.

Section 8. [7-] Responsibilities and Reporting Requirements of Providers and Sponsors. (1) Providers of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 7[6](5) of this administrative regulation, directly to the licensee.

(2) Sponsors of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 9 [8-] Board to Approve Continuing Education Hours; Appeal when Approval Denied. In the event of denial, in whole or part, of any application for approval of continuing education hours, a licensee or a provider shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 10 [9-] Waiver or Extensions of Continuing Education.

(1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding licensure and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure shall reapply for the waiver or extension.

Section 11. [10-] Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit evidence of thirty (30) hours of continuing education within the thirty-six (36) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) The person may request, and the board, at its discretion, may reinstate the licensure, with the provision that the person shall receive thirty (30) hours of continuing education within six (6) months of the date on which the licensure is reinstated.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that

section.

Section ~~12.14~~ Incorporation by Reference. (1) "Application for Continuing Education Credit Approval", (6/02), Kentucky Board of Social Work, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Licensure for Social Work, 44 Fountain Place~~[911-Leawood-Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

SHANNON SANDERS, LCSW

APPROVED BY AGENCY: July 27, 2009

FILED WITH LRC: August 14, 2009 at 11 a.m.

CONTACT PERSON: Margaret Hazlette, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030.

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, November 10, 2009)**

**301 KAR 1:015. Boats and motor restrictions.**

RELATES TO: KRS 150.010, 235.010(4), 150.090, ~~[150.620]~~ 150.625, 150.990, ~~[235.280]~~ 235.990

STATUTORY AUTHORITY: KRS 150.620, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state. KRS 150.620 authorizes ~~[and 150.625 authorize]~~ the department to promulgate administrative regulations governing lands and waters it has acquired. This administrative regulation is necessary to limit the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. (1) A person shall not operate on the lakes listed in subsection (2) of this section~~[, except as otherwise specified]~~:

(a) A house boat;

(b) A monohull boat~~[,]~~ with a center line length exceeding ~~[eighteen (18) feet, six (6) inches except for the following lakes where a monohull boat with a center line length up to] twenty-two (22) feet or [may be operated]~~:

- ~~1. Cedar Creek Lake, Lincoln County;~~
- ~~2. Guist Creek Lake, Shelby County; and~~
- ~~3. Lake Malone, Muhlenburg and Logan County.]~~

(c) A pontoon boat with a float or decking exceeding twenty-two (22) feet, except for the following lakes where a pontoon boat with a float or decking up to thirty (30) feet may be operated~~[,]~~:

1. Cedar Creek Lake, Lincoln County;
2. Lake Beshear, Caldwell County; and
3. Lake Malone, Muhlenburg and Logan County.

(2) List of lakes:

1. Arrowhead Slough, Ballard County;
2. Beaver Creek Lake, Anderson County;
3. Beaver Dam Slough, Ballard County;
4. Bert Combs Lake, Clay County;
5. Big Turner Lake, Ballard County;
6. Boltz Lake, Grant County;
7. Briggs Lake, Logan County;
8. Bullock Pen Lake, Grant County;
9. Burnt Pond, Ballard County;
10. Burnt Slough, Ballard County;
11. Butler Lake, Ballard County;
12. Camico Lake, Nicholas County;
13. Carpenter Lake, Daviess County;
14. Carter Caves Lake, Carter County;
15. Cedar Creek Lake, Lincoln County;
16. Connth Lake, Grant County;
17. Cross Slough, Ballard County;
18. Cypress Slough, Ballard County;
19. Deep Slough, Ballard County;
20. Dennie Gooch Lake, Pulaski County;
21. Elmer Davis Lake, Owen County;

22. Fishpond Lake, Letcher County;
23. Goose Lake, Muhlenberg County;
24. Greenbo Lake, Greenup County;
25. Guist Creek Lake, Shelby County;
26. Happy Hollow Lake, Ballard County;
27. Island Lake, Ohio County;
28. Kincaid Lake, Pendleton County;
29. Kingdom Come Lake, Harlan County;
30. Kingfisher Lakes, Daviess County;
31. Lake Beshear, Caldwell County;
32. Lake Chumley, Lincoln County;
33. Lake Malone, Muhlenberg County;
34. Lake Mauzy, Union County;
35. Lake Reba, Madison County;
36. Lake Washburn, Ohio County;
37. Lebanon City Lake, Marion County;
38. Lincoln Homestead Lake, Washington County;
39. Little Green Sea, Ballard County;
40. Little Turner Lake, Ballard County;
41. Long Pond, Ballard County;
42. Manon County Lake, Marion County;
43. Martin County Lake, Martin County;
44. McNeely Lake, Jefferson County;
45. Metcalfe County Lake, Metcalfe County;
46. Mill Creek Lake, Wolfe County;
47. Mitchell Lake, Ballard County;
48. Pan Bowl Lake, Breathitt County;
49. Pikeville City Lake, Pike County;
50. Sandy Slough, Ballard County;
51. Shanty Hollow Lake, Warren County;
52. Shelby Lake, Ballard County;
53. South Lake, Ohio County;
54. Spurlington Lake, Taylor County;
55. Swan Lake, Ballard County;
56. Twin Pockets Slough, Ballard County;
57. Wilgreen Lake, Madison County.

~~(3) [(2)]~~ Length restrictions in this section shall not apply to a canoe.

(4) A person shall not operate a personal watercraft as defined in KRS 235.010(4) on Cedar Creek Lake.

Section 2. A person shall not operate:

(1) A boat motor without an underwater exhaust; or

(2) ~~[Except in a designated skiing zone,]~~ A boat faster than idle speed when passing a boat with an occupant actively engaged in fishing, except in a designated skiing zone;

(3) The requirements in subsections (1) and (2) of this section shall apply on:

- (a) Beaver Lake, Anderson County;
- (b) Boltz Lake, Grant County;
- (c) Bullock Pen Lake, Grant County;
- (d) Camico Lake, Nicholas County;
- (e) Cedar Creek Lake; Lincoln County;
- (f) Corinth Lake, Grant County;
- (g) Elmer Davis Lake, Owen County;
- (h) Greenbo Lake, Owen County;
- (i) Guist Creek Lake, Shelby County;
- (j) Kincaid Lake, Pendleton County;
- (k) Lake Beshear, Caldwell County;
- (l) Lake Malone, Muhlenburg County;
- (m) Pan Bowl Lake, Breathitt County;
- (n) Shanty Hollow Lake, Warren County;
- (o) Swan Lake, Ballard County and;
- (p) Wilgreen Lake, Madison County.

Section 3. A person shall not operate an electric or an internal combustion boat motor on:

- (1) Dennie Gooch Lake, Pulaski County;
- (2) Kingdom Come Lake, Harlan County; and
- (3) Lake Chumley, Lincoln County.

Section 4. A person shall not operate an internal combustion boat motor and shall only be allowed to use an electric trolling motor on:

- (1) Arrowhead Slough, Ballard County and;
- (2) Beaver Dam Slough, Ballard County;
- (3) Bert Combs Lake, Clay County;
- (4) Big Turner Lake, Ballard County;
- (5) Briggs Lake, Logan County;
- (6) Burnt Pond, Ballard County;
- (7) Burnt Slough, Ballard County;
- (8) Butler, Ballard County;
- (9) Carpenter Lake, Daviess County;
- (10) Carter Caves Lake, Carter County;
- (11) Cross Slough, Ballard County;
- (12) Cypress Slough, Ballard County;
- (13) Deep Slough, Ballard County;
- (14) Fishpond Lake, Letcher County;
- (15) Goose Lake, Muhlenberg County;
- (16) Happy Hollow Lake, Ballard County;
- (17) Island Lake, Ohio County;
- (18) Kingfisher Lake, Daviess County;
- (19) Lake Mauzy, Union County;
- (20) Lake Reba, Madison County;
- (21) Lake Washburn, Ohio County;
- (22) Lebanon City Lake, Marion County;
- (23) Lincoln Homestead Lake, Washington County;
- (24) Little Green Sea, Ballard County;
- (25) Little Turner Lake, Ballard County;
- (26) Long Pond, Ballard County;
- (27) Marion County Lake, Marion County;
- (28) Martin County Lake, Martin County;
- (29) McNeely Lake, Jefferson County;
- (30) Metcalfe County Lake, Metcalfe County;
- (31) Mill Creek Lake, Wolfe County;
- (32) Mitchell Lake, Ballard County;
- (33) Pikeville City Lake, Pike County;
- (34) Sandy Slough, Ballard County;
- (35) Shelby Lake, Ballard County;
- (36) South Lake, Ohio County;
- (37) Spurlington Lake, Taylor County; and/or
- (38) Twin Pockets Slough, Ballard County.

Section 5. On the following lakes, a person shall not operate a boat motor larger than ten (10) horsepower:

- (1) Beaver Lake, Anderson County;
- (2) Boltz Lake, Grant County;
- (3) Bullock Pen Lake, Grant County;
- (4) Corinth Lake, Grant County;
- (5) Elmer Davis Lake, Owen County;
- (6) Kincaid Lake, Pendleton County;
- (7) Shanty Hollow Lake, Warren County; and
- (8) Swan Lake, Ballard County.

Section 6. A person shall not operate:

- (1) A boat motor larger than 150 horsepower on Lake Beshear,
- (2) ~~[-or Lake Malone; unless provided by subsection 2 of this section.~~
- (2) ~~At Lake Malone, motorboats with 200 horsepower or less shall be permitted from the first weekend after Labor Day through the first weekend prior to Memorial Day.~~
- (3) ~~A motorboat faster than idle speed on:~~
  - (a) Carnico Lake, Nicholas County;
  - (b) Greenbo Lake, Greenup County;
  - (c) Pan Bowl Lake, Breathitt County; and/or
  - (d) Wilgreen Lake, Madison County.

Section 7. A person operating a boat motor larger than ten (10) horsepower shall not exceed idle speed at any time on the following lakes:

- (1) Herb Smith/Cranks Creek Lake; and
- (2) Martins Fork Lake.

BENJY KINMAN, Deputy Commissioner  
For, JONATHAN GASSETT, Commissioner  
MARCHETTA SPARROW, Secretary

APPROVED BY AGENCY: September 14, 2009  
FILED WITH LRC: September 14, 2009 at 10 a.m.

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

**TOURISM, ARTS AND HERITAGE CABINET**  
**Kentucky Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, November 10, 2009)**

301 KAR 2:225. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340, 150.603

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360(4) authorizes the department to restrict ~~promulgate administrative regulations restricting the~~ methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by 50 C.F.R. Parts 20 and 21 ~~(the U.S. Fish and Wildlife Service, EO 2008-516, effective June 16, 2008, reorganized and renamed the Commerce Cabinet as the Tourism, Arts, and Heritage Cabinet)~~.

Section 1. Definitions. (1) "Dove" means mourning dove or ~~and~~ white-winged dove.

(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.

(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

(4) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Season Dates~~(for Gun Archery and Falconry)~~. (1) A person shall not hunt a migratory game bird except during a season ~~[on a date]~~ established in this administrative regulation.

(2) The following seasons shall apply to migratory bird hunting: ~~[A person shall use the following time frames when hunting migratory birds.]~~

(a) Dove, beginning on:

1. September 1 for fifty-four (54) consecutive days; and

2. Thanksgiving Day for nine (9) consecutive days; and;

3. The Saturday after Christmas for seven (7) consecutive days.

(b) Woodcock, beginning on the third Saturday in October for forty-five (45) consecutive days.

(c) Common snipe, beginning on:

1. The third Wednesday in September for forty-seven (47) consecutive days; and

2. Thanksgiving Day for sixty (60) consecutive days.

(d) Wood duck and teal, beginning on the third Wednesday in September for five (5) consecutive days.

(e) Virginia rail, sora rail, common moorhen, and purple gallinule ~~[and sora rails, common moorhen and purple gallinule]~~ beginning on September 1 for seventy (70) consecutive days.

(f) Canada goose, beginning the first Saturday in September for nine (9) consecutive days except that the following areas as established in 301 KAR 2:224 shall be closed:

1. Ballard reporting area;

2. Public lands in the West-Central Goose Zone; and

3. The Northeast Goose Zone [geeee.

4. The first Saturday in September for nine (9) consecutive days;



2. Statewide except for the Ballard reporting area, and public lands in the west-central goose zone and the entire northeast goose zone which are established in 301 KAR 2:224.]

Section 3. Bag and Possession Limits. (1) A person shall not exceed the following limits:

(a) Dove: [Doves.]

1. Daily limit [limit shall be] fifteen (15); and

2. Possession limit [limit shall be] thirty (30). [(30).]

(b) [3.] Eurasian collared dove: No limit, except that a hunter, if in the field or during transport, shall keep one (1) of the following attached to the bird:

1. The head; or

2. A fully-feathered wing [doves may be taken in addition to mourning doves if the hunter leaves the head or wing attached while in the field.]

(c) [(b)] Woodcock:

1. Daily limit [limit shall be] three (3); and

2. Possession limit [limit shall be] six (6).

(d) [(e)] Common snipe:

1. Daily limit [limit shall be] eight (8); and

2. Possession limit [limit shall be] sixteen (16).

(e) Virginia and sora rail, singly or in aggregate: [(d) Virginia rails and sora rails, singly or in the aggregate:]

1. Daily limit [limit shall be] twenty-five (25); and

2. Possession limit [limit shall be] twenty-five (25).

(f) [(e)] Common moorhen and purple gallinule, singly or in aggregate: [gallinules singly or in the aggregate:]

1. Daily limit [limit shall be] fifteen (15); and

2. Possession limit [limit shall be] thirty (30).

(g) [(f)] Wood duck and teal:

1. Daily limit [limit shall be] four (4), which shall not include more than two (2) wood ducks; and

2. Possession limit [limit shall be] eight (8), which shall not include more than four (4) wood ducks.

(h) Canada goose: [(g) Canada geese.]

1. Daily limit: two (2); and [limit two (2) birds; and]

2. Possession limit: four (4). [limit four (4) birds.]

(2) A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep one (1) of the following attached to the bird:

(a) The head; or

(b) A fully-feathered wing [A person shall leave the head or one (1) fully-feathered wing attached to a migratory game bird, except a dove, being held in the field or transported.]

Section 4. Shooting Hours. A person shall not take a migratory game bird except during the times [a time] established in this section. (1) If hunting dove on WMA land, a person shall hunt:

(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(2) If hunting dove on private land, a person shall hunt:

(a) Between 11 a.m. and sunset on September 1; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(3) [Doves:]

(a) The time between 11 a.m. and sunset during the September and October portions of the season, except if dove hunting on private land after September 1, the time between one-half (1/2) hour before sunrise and sunset; and

(b) The time between one-half (1/2) hour before sunrise and sunset during the November, December, and January segments of the season. (2) Other species listed in this administrative regulation shall [may] be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. 20.21 for waterfowl hunting; or

(c) Shot larger than size "T".

Section 6. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) [A Wildlife Management Area owned or controlled by the department:

(a) Except as provided in this section, all provisions of this administrative regulation shall apply.

(b) A person shall not:

(a) [1.] Hunt wood duck or teal on an area closed to waterfowl hunting as established in [by] 301 KAR 2:222;

(b) [2.] Hunt in an area marked by a sign as closed to hunting; or [and]

(c) [3.] Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on any of the following areas shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. 20.21:

(a) Ballard WMA;

(b) Boatwright WMA;

(c) Doug Travis WMA;

(d) Duck Island WMA;

(e) Kaler Bottoms WMA;

(f) Kentucky River WMA;

(g) Ohio River Islands WMA;

(h) Sloughs WMA;

(i) South Shore WMA;

(j) Yatesville Lake WMA; or

(k) WMA wetland management units as posted by sign [A person hunting dove on the Ballard, Boatwright, South Shore, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River, Doug Travis Wildlife Management Area, Yatesville Lake Wildlife Management Area, and established Wildlife Management Area waterfowl refuges as posted by sign, shall only possess or use U.S. Fish and Wildlife Service approved nontoxic shot.]

(3) At Ballard WMA, a person shall not hunt [Wildlife Management Area]

(a) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe [A person shall not hunt doves, rails, moorhens or gallinules] after October 13; or

(b) Woodcock [13, except as provided in 301 KAR 2:221;

(b) Snipe A person shall not hunt snipe after October 13; and

(c) A person shall not hunt woodcock.]

(4) In the [The] Swan Lake Unit of Boatwright WMA, a person shall not hunt [Wildlife Management Area.]

(a) On or over Swan Lake proper [The body of water known as Swan Lake] [is closed to hunting];

(b) Dove, Virginia rail, sora rail, common moorhen, purple gallinule, or snipe [A person shall not hunt doves, rails, moorhens or gallinules] after October 13; or

(c) Woodcock [13, except as provided in 301 KAR 2:221;

(c) A person shall not hunt snipe after October 13; and

(d) A person shall not hunt woodcock.]

(5) At Miller Welch - Central Kentucky WMA, a person shall not hunt [Wildlife Management Area.]

(a) Dove or snipe [A person shall not hunt doves] after October 13; or

(b) Woodcock [13, except as provided in 301 KAR 2:221;

(b) A person shall not hunt snipe after October 13, except as provided in 301 KAR 2:221; (c) A person shall not hunt woodcock.]

(6) At Grayson Lake WMA, a [Wildlife Management Area] person shall not hunt:

(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;

(b) On Deer Creek Fork; or

(c) On [or from the shores of] Camp Webb property or the state park, except for youths drawn for the quota dove hunt on Camp Webb property on the first Saturday in September.

(7) At Land Between the Lakes National Recreation Area, a [A] person shall not hunt a migratory game bird [birds] between the last Saturday in September and November 30.

(8) At West Kentucky WMA, a [Wildlife Management Area] A]



person shall not hunt:

(a) On "A" Tracts; or a tract designated by a number followed by the letter "A";

(b) Canada geese during the September season;

(9) At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the Island Wildlife Management Area, The Greenbrier Creek Branch of Yatesville Lake, and Yatesville Lake, including all of the islands, north of the mouth of the Greenbrier Creek Branch is closed to all waterfowl hunting.

(10) At Robinson Forest WMA, a[A] person shall not hunt a migratory game bird on the main block of the WMA [Robinson Forest.

**Section 7. Dove Hunter Guidelines on Wildlife Management Areas.** (1) The department may establish hunter density guidelines for a dove hunting field on department property after considering the following:

(a) Terrain of the field;

(b) Topography of the field; and

(c) Providing for approximately forty (40) yards between hunters.

(2) A strategically located sign shall be posted in a field advising a hunter:

(a) Of the recommended hunter density; and

(b) That hunting in excess of the declared hunter density limit shall be at the hunter's own risk.

(3) A hunter behaving in an unsafe or uncooperative manner shall be required to leave the premises.]

BENJY KINMAN, Deputy Commissioner,

For JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 19, 2009

FILED WITH LRC: August 28, 2009 at 4 p.m.

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

**CABINET FOR ECONOMIC DEVELOPMENT**  
**Kentucky Economic Development Finance Authority**  
**(As Amended at ARRS, November 10, 2009)**

**307 KAR 9:010. Application for Kentucky Reinvestment Act Program.**

RELATES TO: KRS 154.20-033, 154.34-070

STATUTORY AUTHORITY: KRS 154.20-033, 154.34-070

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.34-070 authorizes [requires] the Kentucky Economic Development Finance Authority to establish additional procedures and standards for the application process for KRS Chapter 154.34 economic development incentives. KRS 154.20-033(1)(b) and 154.34-070 authorize [authorize] the Kentucky Economic Development Finance Authority to impose fees in conjunction with the application process. This administrative regulation establishes [adopts] the application for the KRS Chapter 154.34 incentives and sets the fee structure.

NECESSITY, FUNCTION AND CONFORMITY: KRS 154.34-070 requires the Kentucky Economic Development Finance Authority to establish additional procedures and standards for the application process for KRS 154.34 economic development incentives. KRS 154.20-033 authorizes the Kentucky Economic Development Finance Authority to impose fees in conjunction with the application process. This administrative regulation adopts the application for the KRS 154.34 incentives and sets the fee structure.

**Section 1. Definition.** (1) "Application" means the form "Application for Kentucky Reinvestment Act (KRA) Program" with instructions.

tions.

**Section 2. Application Supplements.** In addition to the information required by KRS 154.34-070, the applicant shall provide:

(1) All information required by the application which is incorporated [herein] by reference; and[-]

(2) An application fee in the amount of \$500 for applications submitted during the period July 2009 through December 2009, \$750 for the period January 2010 through December 2010, and \$1,000 beginning January 2011 and thereafter.

**Section 3. Incorporation by Reference.** (1) "Application for Kentucky Reinvestment Act (KRA) Program", with instructions, July 30, 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Economic Development, Department of Financial Incentives, Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky Monday through Friday, 8 a.m. to 4:30 p.m.

JEAN HALE, Chairman

LARRY HAYES, Secretary

APPROVED BY AGENCY: August 17, 2009

FILED WITH LRC: August 20, 2009 at 4 p.m.

CONTACT PERSON: Catherine C. Staib, Assistant General Counsel, Cabinet for Economic Development, Old Capital Annex, 300 West Broadway, Frankfort, Kentucky 40601, phone (502) 564-7670, fax (502) 564-1535.

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Kentucky Parole Board**  
**(As Amended at ARRS, November 10, 2009)**

**501 KAR 1:030. Determining parole eligibility.**

RELATES TO: KRS 119.025, 197.410(2), 346.185, 439.340, 439.3401, 439.563, 532.043, 532.060, 532.080, 640.080

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

**Section 1. Definitions.** (1) "Board" is defined by KRS 439.250(5).

(2) "Chair" means the chairman of the board.

(3) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole consideration.

(4) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.

(5) [~~"Executive director" means the executive director of the board.~~

(6) "Parole" means the release of an inmate with a signed parole certificate to:

(a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision;

(b) Answer the detainer.

(6) [(7)] "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence.

(7) [(8)] "Parole rescission" means a decision of the board to terminate or rescind an inmate's parole recommendation, before the inmate is actually released on parole.

(8) [(9)] "Parole revocation" means the formal procedure by which the board may terminate or revoke a parolee's release on parole.

(9) "Physical injury" is defined in KRS 500.080(13).

(10) "Preliminary revocation hearing" means the initial hearing conducted by a hearing officer to determine whether probable

cause exists to believe a parolee has violated the conditions of his parole.

(11) "Reconsideration" means a decision to review a previous board action.

(12) "Restitution" is defined in KRS 532.350(1)(a).

(13) "Serious physical injury" is defined in KRS 500.080(15).

(14) "Serve-out", "SOT", or "serve-out-time" means a decision of the board that an inmate shall serve until the completion of his sentence.

(15)(14) "SOTP" means Sex Offender Treatment Program.

(16)(15) "Youthful offender" is defined in KRS 600.020(63).

Section 2. Ineligibility. (1) An eligible sex offender, as defined in KRS 197.410(2), convicted prior to July 15, 1998 shall not be eligible for a parole consideration hearing unless:

(a) He has been denied entrance into the Sex Offender Treatment Program;

(b) He has been terminated from the SOTP; or

(c) He has successfully completed the SOTP.

(2) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4).

(3) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his conditional discharge by the court pursuant to KRS 532.043 and 532.060 shall not be eligible for parole consideration.

(4) If an inmate is within sixty (60) days of being released by minimum expiration, administrative release, or maximum expiration at the time of his next scheduled parole hearing, the inmate shall not be eligible for parole.

Section 3. Parole Eligibility. (1) Initial parole review date. Except as provided by Section 2 of this administrative regulation, a person confined to a state penal institution or county jail shall have his case reviewed by the board, in accordance with the following schedules:

(a) Nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years.

1. A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years shall have his or her case reviewed by the Parole Board upon reaching his or her parole eligibility date as established in KRS 439.340(3)(a).

2. Except as provided by subparagraph 3 of this paragraph, the offender shall be released on parole if the offender:

a. Has completed the programs recommended by the Kentucky Department of Corrections;

b. Has not been found to have committed a disciplinary violation that is ranked as Category 3 and involves violence or that is ranked as Category 4 or higher, pursuant to Corrections Policy and Procedures 15.2 and 15.6, incorporated by reference in 501 KAR 6:020; and

c. Does not have an active detainer.  
3. The offender shall not be released under subparagraph 2 of this paragraph if the offender:

a. Is a violent offender as defined in KRS 439.3401;

b. Is convicted of a sex crime listed in KRS Chapter 510, 530.020, 530.064(1)(a), 531.310, or 531.320; or

c. Is convicted of a crime in which the elements of the offense or the judgment of the Court demonstrate that in the commission of the crime;

(i) A weapon was used;

(ii) A human life was taken; or

(iii) A serious physical injury occurred.

(b) [Nonviolent offenders convicted of a Class C Felony and confined to a state penal institution or county jail, shall have his or her case reviewed by the Parole Board after serving fifteen (15) percent of the original sentence. This provision does not apply to:

1. Violent offenders as defined in KRS 439.3401;

2. Offenders convicted of any sex offenses listed in KRS Chapter 510;

3. Offenders who have ever been convicted of a crime in which:

a. A life was taken;

b. Serious physical injury occurred; or

c. A sex offense listed in KRS Chapter 510 was committed.

(b) Nonviolent offenders convicted of a Class D felony, upon reaching his or her parole eligibility date as provided in KRS 439.340(3)(a), shall be reviewed by the Parole Board and released on parole if he or she meets the following criteria:

1. The inmate must have completed the programs recommended by the Kentucky Department of Corrections.

2. The inmate must not have any disciplinary reports for offenses:

a. Ranked as Category 3 that involve violence; or

b. Ranked as category 4 or higher;

3. The inmate must not have any active detainers;

4. This provision does not apply:

a. To violent offenders as defined in KRS 439.3401;

b. To offenders convicted of a sex crime listed in KRS Chapter

510;

c. Where the elements of the offense or the judgment of the Court demonstrate that in the commission of the crime:

(i) A weapon was used;

(ii) A life was taken; or

(iii) Serious Physical injury occurred.

(e) If convicted of a felony offense after December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years
Persistent felony offender I in conjunction with a Class A, B, or C felony	10 years

(c)(d)(b) For a crime, committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentences of life	20 years

(d) For a crime, committed on or after July 15, 2002, which is:

1. Burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510;

2. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

3. Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

4. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentences of life	20 years

(e) For a crime, committed on or after July 12, 2006, which is:

1. A capital offense;

2. Class A felony;

3. Complicity to a Class A felony;

4. Class B felony involving the death of the victim or serious physical injury to a victim;

5. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

6. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and KRS 531.310(2)(c);

7. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and KRS 531.320(2)(c);

8. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

9. Promoting prostitution in the first degree as described in KRS 529.030(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

10. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

11. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

12. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentences of life	20 years

(f) For a crime, committed on or after June 26, 2007, which is:

1. A capital offense;

2. Class A felony;

3. Complicity to a Class A felony;

4. Class B felony involving the death of the victim or serious physical injury to a victim;

5. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

6. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

7. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

8. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

9. Human trafficking as described in KRS 529.010(5)(b) when the victim is a minor;

10. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

11. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

12. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentences of life	20 years

(g)(1)(e)(f) For any crime, committed on or after July 15, 1986, but prior to July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	50% of the sentence received or 12 years, whichever is less
Sentence of life	12 years

(h)(1)(f)(g) If convicted of a felony offense committed prior to December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to	4 years

and including 21 years	
More than 21 years, up to and including life	6 years

(i)(1)(g)(h) For an individual serving multiple sentences, if one (1) or more of the crimes resulted in a conviction committed under paragraph (c) of this subsection and one (1) or more of the crimes resulted in a conviction committed under paragraph (b) of this subsection, parole eligibility shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(i) Except as provided by subparagraphs 1 and 2 of this paragraph, (h)(1)(g) after the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board, except:

1. The maximum deferment given at one (1) time shall not exceed the statutory minimum parole eligibility for a life sentence, except:

2. The maximum deferment given at one time shall not exceed twenty-four (24) months for an offender convicted of a Class D or Class C felony except for:

a. A violent offender as defined in KRS 439.3401;

b. An offender convicted of a sex offense listed in KRS Chapter 510, 530.020, 530.064(1)(a), 531.310, or 531.320; and

c. An offender who has ever been convicted of a crime in which the elements of the offense or the judgment of the court demonstrate that in the commission of the crime:

(i) A human life was taken;

(ii) A serious physical injury occurred; or

(iii) A sex offense listed in KRS Chapter 510, 530.020, 530.064(1)(a), 531.310, or 531.320 was committed. Involuntary offenders convicted of a Class D or Class C felony. This provision does not apply to:

a. Violent offenders as defined in KRS 439.3401;

b. Offenders who have been convicted of any sex offense listed in KRS Chapter 510;

c. Offenders who have ever been convicted of a crime in which a life was taken, serious physical injury occurred, or a sex offense listed in KRS Chapter 510 was committed.]

3. The board, at the initial or a subsequent review, may [shall reserve the right to] order a serve-out on a sentence, except as provided by Section 3(1)(b)2 of this administrative regulation. If the sentence is a life sentence, the full board shall vote, however, a vote from the full board shall be required before the board can order a serve-out on a life sentence.]

(k)(1)(i)(j) 1.a. Except as provided by clause b of this subparagraph, if a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration, he has not been discharged since his original admission, and if this new conviction will be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

b. If the sentence received for the latter conviction requires the prisoner to serve a fixed percentage of the sentence or a fixed number of years prior to becoming eligible for parole, parole eligibility shall be determined by the latter conviction only.

2.a. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be calculated on the length on the new sentence only, beginning from the date of his final sentencing, unless the board has previously set a new parole eligibility date.

b. If the board has previously set a new parole eligibility date, the parole eligibility date shall be the date which last occurs.

3. If parole is recommended, and a confined prisoner receives an additional sentence after board consideration, but before his release:

a. The recommendation of parole shall automatically be voided; and

b. The new parole eligibility date shall be calculated from the date of original admission on the aggregate sentences.

(l)(1)(k)(l) If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall

include a life sentence.

1. Except as provided by subparagraph 2 of this paragraph, in determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution, or on a sentence for a crime committed while on an escape, the total parole eligibility shall be calculated by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

a. The amount of time to be served for parole eligibility on the original sentence;

b. If the inmate has an additional sentence for escape, the amount of time to be served for parole eligibility on the additional sentence for the escape;

c. If the inmate has an additional sentence for a crime committed while in the institution, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while in the institution, and

d. If the inmate has an additional sentence for a crime committed while on escape, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while on escape.

2. If the board has previously set a parole eligibility date for an inmate described in subparagraph 1 of this paragraph, and that date is later than that calculated under subparagraph 1 of this paragraph, the later date shall be the parole eligibility date.

~~(m)(k)(4)~~ 1. Except as provided by subparagraph 2 of this paragraph, if a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date.

2.a. If the prisoner later receives a sentence for the escape, the previous deferment shall be automatically voided and the new parole eligibility date shall be calculated based on the new sentence beginning from the date of sentencing for the new sentence, unless the deferment date set by the board is a later date than that determined by the calculations.

b. If the deferment date set by the board is a later date, the parole eligibility date shall be the date which last occurs.

~~(n)(l)(4)~~ If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, his parole eligibility date shall be calculated from the date of his new sentence or from the date previously set by the board, whichever occurs last ~~shall last occur~~.

~~(o)(m)(4)~~ If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be void. Upon return to a state institution, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines it may conduct a face-to-face hearing with this person at the institution with a three (3) member panel.

~~(p)(n)(4)~~ If a person is shock probated, or on prerelease probation, and is later returned to the institution as a shock probation violator or prerelease probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.

~~(q)(o)(4)~~ If a person on shock probation or prerelease probation is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

~~(r)(p)(4)~~ If a person on parole is returned to the institution, has received a new sentence for a crime committed while on parole, and is probated or shock probated on the new sentence, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines, it may

conduct a face-to-face hearing with this person at the institution with a ~~three (3) member~~ panel of at least two (2) members

~~(2) [An inmate who has committed an offense on or after July 13, 1998 shall not be eligible for parole consideration prior to his minimum eligibility date, as determined pursuant to subsection (1) of this section, unless he has:~~

~~(a) Successfully completed the First Incarceration Shock Treatment (FIST) Program implemented by CPP 21-2, VI. B., Eligibility Criteria, incorporated by reference, in 601 KAR 6-020; and~~

~~(b) Not been convicted of an offense that resulted in serious physical injury.~~

~~(3)]~~ The parole hearing shall consist of an interview with the inmate by the board, or a panel. If the inmate is too ill to appear,

~~(a)]~~ the board may appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members; and

~~(b)]~~ A majority vote by a quorum shall be required before action is taken.

~~(3)](4)]~~ If an inmate refuses to meet the board on his scheduled hearing date, a statement to that effect signed by the inmate and the institutional parole officer shall be presented to the board. A person refusing to meet the board may petition the board for reconsideration.

~~(4)](5)]~~ An inmate who is psychologically unstable may be deferred in absentia until he is able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

~~(5)](6)]~~ The board shall schedule the initial parole hearing as follows:

(a) For an institution that has hearings scheduled once per month, the inmate shall, if administratively possible, be seen during the month he is eligible for parole consideration.

(b) For an institution that has hearings scheduled bimonthly, the inmate shall, if administratively possible, be seen during the month eligible or one (1) month prior to the month he is eligible for parole consideration.

(c) If it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible, the inmate shall be seen at the next available board hearing conducted at the institution where the inmate is housed.

Section 4. Board Criteria for Recommending or Denying Parole. (1) Before recommending or denying parole, the board shall apply one (1) or more of the following factors to an inmate:

(a) Current offense - seriousness, violence involved, firearm used, life taken or death occurred during commission;

(b) Prior record - prior felony convictions, prior misdemeanor convictions, history of violence, prior contact with law enforcement or criminal courts where conviction did not occur;]

(c) Institutional adjustment and conduct - disciplinary reports, loss of good time, work and program involvement;

(d) Attitude toward authority - before and during incarceration;

(e) History of alcohol or drug involvement;

(f) History of prior probation, shock probation or parole violations;

(g) Education and job skills;

(h) Employment history;

(i) Emotional stability;

(j) Mental status - capacity and stability;

(k) Terminal illness;

(l) History of deviant behavior;

(m) Official and community attitudes toward accepting an inmate back in the county of conviction;

(n) Victim impact statement and victim impact hearing;

(o) Review of parole plan - housing, employment, need for community treatment and follow-up resources; and

(p) Other factors involved that relate to public safety or the inmate's needs.

(2) If the board makes a parole recommendation:

(a) It may rescind the recommendation at any time prior to the release of an inmate on parole; and

(b) Parole shall not become effective until ~~[such time as]~~ the home ~~[and employment]~~ placements are approved, the parole certificate is signed, and the inmate leaves the institution.

(3) The board may reconsider a decision to deny parole if the chair requests the full board to reconsider a decision, the full board votes in writing, and the majority votes in favor of the reconsideration hearing.

(4) An inmate whose parole is revoked, rescinded or denied by deferment or serve-out, or his authorized legal representative, may request an appellate review by the board. A request for the review shall be in writing and shall be postmarked no later than twenty-one (21) days from the date the final disposition is made available to the inmate. If the request is not postmarked within twenty-one (21) days, it shall be denied. The request shall be screened by a board member or his designee to decide if a review shall be conducted. A review shall be conducted for the following reasons:

(a) If there is an allegation of misconduct by a board member that is substantiated by the record;

(b) If there is a significant procedural error by a board member; or

(c) If there is significant new evidence that was not available when the hearing was conducted [at the time of the hearing]. A request based on the availability of new evidence or information shall be accompanied by adequate documentation.

(5) A request for appellate review shall be based on one (1) or more of the reasons established in subsection (4) of this section. A request based on an allegation of misconduct or significant procedural error shall clearly indicate the specific misconduct or procedural error. If the case is set for review, it shall be conducted from the record of the first hearing. The appearance of the inmate shall not be necessary. If a board member wishes to have additional testimony, an appearance hearing may be conducted. The board shall vote after reviewing the initial taped interview and the record. A decision to change the result of the hearing that is the subject of the appeal shall require the concurrence of a quorum of the board [four (4) board members]. This decision shall be final.

Section 5. Youthful Offender. (1) A youthful offender shall be subject to the jurisdiction of the board as described in KRS 640.080.

(2) The Department of Juvenile Justice and the Department of Corrections shall provide the board with necessary records to conduct a hearing as described in KRS 640.100.

(3) A youthful offender shall be subject to the board's applicable administrative regulations.

(4) A youthful offender housed by the Department of Juvenile Justice shall have a hearing at a site agreed upon by that department and the board.

(5) A youthful offender housed by the Department of Corrections shall have a hearing at a site determined by the board.

(6) An administrative law judge shall hold a preliminary revocation hearing at a facility out of sight and sound of adult inmates.

(7) A final revocation hearing for a youthful offender shall be held at a site agreed upon by the Department of Juvenile Justice and the board or the central office of the board.

(8) Special hearings for a youthful offender shall be held in central office.

Section 6. Conditions of Parole. (1) The parolee shall:

(a) Report to his parole officer immediately upon arrival at his destination and submit a report in writing once a month, or more if directed by the officer;

(b) Permit his parole officer to visit his home and place of employment at any time;

(c) Not indulge in the use of a nonprescribed controlled substance or alcohol;

(d) When directed to do so by the parole officer, submit to random tests of blood, breath, saliva, or urine to determine the existence of any illegal substances in his system;

(e) Work regularly and support his legal dependents; if unemployed, he shall report this fact to his officer and make every attempt to obtain other employment;

(f) Not associate with a convicted felon except for a legitimate purpose, including family, residential, occupational, or treatment;

(g) Not visit with an inmate of a penal institution without permission of his parole officer;

(h) Not leave the state, district, residence, or place of employ-

ment without written permission of his parole officer;

(i) Not be permitted to purchase, own, or have in his possession a firearm or other weapon;

(j) Not violate any law or city ordinance of this state, any other state or the United States;

(k) Not falsify any report to his parole officer;

(l) Not have the right to register for voting purposes and may not hold office; if he registers or reregisters prior to restoration of his civil rights, he shall be in violation of the law which carries a maximum penalty of five (5) years in prison pursuant to KRS 119.025;

(m) Comply with 501 KAR 1.030 through 501 KAR 1.050 and special instructions of his parole officer;

(n) Pay a supervision fee unless expressly waived by the board;

(o) Pay the balance of the restitution ordered pursuant to KRS 439.563; and

(p) Pay the balance of the sum payable to the Crime Victims Compensation Fund pursuant to KRS 346.185.

(2) If additional supervision or conditions are deemed necessary in a case, the board may order a parolee to observe any condition the board has determined is necessary for the safety of the public or rehabilitation of the parolee.

This is to certify that the Executive Director of the Parole Board has reviewed and recommended these amendments to this administrative regulation prior to its adoption, as required by KRS 439.320(8).

CHARLES A. WILKERSON, Executive Director

APPROVED BY AGENCY: September 2, 2009

FILED WITH LRC: September 2, 2009 at 4 p.m.

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#### TRANSPORTATION CABINET

Department of Vehicle Regulation

Division of Motor Vehicle Licensing

(As Amended at ARRS, November 10, 2009)

#### 601 KAR 9:130. Motor vehicle registration.

RELATES TO: KRS 43.010(2), 45.149 [Chapters] 186, 186A

STATUTORY AUTHORITY: KRS 186.020, 186.041, 186.042, [186.044,] 186.053, 186.162, 186.164 [186.1701, 186.1702, 186.171, 186.172, 186.1721, 186.1723, 186.173, 186.1731, 186.1732, 186.1751, 186.177, 186.178, 186.179, 186.182, 186.185, 1902 Ky. Acts ch. 404]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.020 requires owners of motor vehicles to apply for registration in accordance with administrative regulations issued by the Transportation Cabinet before operating the motor vehicle or permitting its operation. Other sections of KRS Chapter 186 either permit or require the Transportation Cabinet to adopt administrative regulations regarding the issuance of special license plates for [the] motor vehicles and motorcycles during registration [of the vehicle] KRS Chapter 186.164(15) requires the cabinet to promulgate administrative regulations to implement auditing requirements. This administrative regulation establishes auditing [these] procedures.

Section 1. Application for Kentucky Certificate of Title and Registration Form TC 96-182 [Vehicle Transaction Record Form]. (1) The certificate of title and registration form [vehicle transaction record form] required by KRS 186A.060 shall serve as the application for first time vehicle registration.

(2) A Kentucky [The] certificate of registration [issued when a vehicle is registered in Kentucky] shall serve as the application for renewal of registration.

[(2) The "Vehicle Transaction Record" form TC 96-182 as revised March, 1989 is incorporated by reference in this administrative regulation. A copy of the form may be obtained, copied or

viewed at the office of any county clerk or from the Department of Vehicle Regulation, Division of Motor Vehicle Licensing, 2nd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The office hours of the Division of Motor Vehicle Licensing are 9 a.m. to 4:30 p.m. eastern time, Monday through Friday, except holidays.]

Section 2. Title in Motor Vehicle. During the fifteen (15) day period KRS 186.020(1) allows a person to register a newly acquired motor vehicle or a new Kentucky resident to register his or her motor vehicle:

(1) An assigned title or bill of sale pursuant to KRS 186.020(1) shall be carried in the motor vehicle if the vehicle was last licensed in a title issuing jurisdiction; or

(2) If the jurisdiction in which the motor vehicle was last licensed does not issue titles, the standard document for perfecting the sale of the motor vehicle in the licensing jurisdiction shall be carried in the vehicle.

Section 3. Found License Plate. A[any] person finding a lost, unexpired registration plate shall deliver it to the Department of Vehicle Regulation or to any Kentucky county clerk.

Section 4. Temporary Kentucky Residents. (1) A[any] full-time college student or member of the armed forces who is temporarily maintaining a place of residence[abode] in Kentucky while attending a Kentucky college or university or while stationed at a military facility shall not be required to register his or her vehicle in Kentucky if he or she maintains residency in the applicable[his] home state.

(2) To establish that a[However, the following shall be legally sufficient to establish a case that the] vehicle owner is a resident of Kentucky and therefore required to register the vehicle in Kentucky the vehicle owner shall have:

(a) Purchased primary residence real estate[The purchase of] property in Kentucky;

(b) Registered[Registration] to vote in Kentucky; or

(c) Applied for or possess[The application for or possession of] a Kentucky motor vehicle operator's license.

Section 5. Placement of License Plate and Renewal Decal. (1) A license plate shall not[No license plate shall] be placed on a motor vehicle other than the vehicle[one] for which it was issued.

(2) A renewal decal shall not be placed on a[No renewal decal shall be placed on any] license plate except the plate for which the renewal decal was issued.

(3) A renewal decal shall only be placed on its associated license plate in the indentation provided for a decal.

Section 6. Lost or Stolen Special Plates. If a special license plate is lost or stolen the individual responsible for the registration of the vehicle may secure a replacement special license plate by following the provisions established in[provision of] KRS 186.162(2) through (4)[186.180].

Section 7. Renewal Decals on Special Plates. (1) Registrations[Registration] for vehicles with license plates issued as established in KRS 186.162(2) through (4) shall[under the authority of KRS 186.173, 186.1731, 186.1732 and 186.182 are required to] be renewed each year to remain valid.

(2) The Transportation Cabinet shall issue[have the authority to determine if] a new license plate [shall be issued] or, if the renewal is validated, place[by placing] a renewal decal on the existing license plate.

(3) If the special license [national guard] plate[, civil air patrol plate, congressional medal of honor recipient plate or army reserve plate] deteriorates to the point that[where] the inscriptions are not discernible, the owner may obtain a replacement plate free of charge.

Section 8. National Guard License Plates. (1) Taxicabs, airport shuttle vehicles, and limousines, [and U-drive-it vehicles] registered as established in[under the provisions of] KRS 186.050(1) shall not be issued a national guard license plate as established

in[under the provisions of] KRS 186.041(1)[186.173].

(2) If the applicant for a national guard license plate is a Kentucky national guard retiree, the[his] application shall be signed by the custodian of military records, Department of Military Affairs. The custodian's signature shall certify that the applicant is a retiree of the Kentucky National Guard with at least twenty-five (25) years of service.

Section 9. Disabled Veterans and Disabled Persons License Plate. (1) A license plate shall[may] only be issued to a disabled veteran as established in[under the provisions of] KRS 186.041(2) for use on a vehicle that[which] would normally be registered as established in[under the provisions of] KRS 186.050(1) or (3)(a).

(2)(a) A license plate shall be issued to a disabled person who meets the requirements established in KRS 186.042 and provides the proof of disability established in KRS 186.042 (3)(a)(b).

(b) A person applying for a disabled license plate shall complete an Application for Special Registration Plate for Disabled Persons, Transportation Cabinet Form 96-205.

Section 10. Armed Forces License Plate. The special armed forces [reserve] license plate as established in[created by] KRS 186.041(1)[186.1732] shall be made available to any eligible current member of any branch of the United States military reserves. It shall also be made available to any eligible retired reservist with twenty-five (25) years of service.

Section 11. Gold Star Mother or Gold Star Spouse License Plate. (1)(a) A Gold Star Mother license plate shall be authorized for a mother whose son or daughter died while serving the country in the United States Armed Forces.

(b) A Gold Star Spouse license plate shall be authorized for the spouse of a person who died while serving the country in the United States Armed Forces.

(2) To be eligible, the mother or spouse shall submit a completed Report of Casualty DD Form 1300, [Report of Casualty], accessible on the National Personnel Records Center Web site at <http://www.archives.gov/veterans/research/> to the Kentucky Department of Veterans Affairs.

Section 12. Application for Special License Plate. (1) An applicant for a[any] special license plate shall provide proof of eligibility as established in 186.162(2) through (4)[make application on the form presented by the Transportation Cabinet].

(2) Proof of eligibility[The application] shall be submitted to the [Transportation Cabinet or the] county clerk in the applicable[his] county of residence [as required by the authorizing statute and so stated on the application form].

Section 13. An applicant for one (1) of the special license plates listed in this section shall provide the following required information:

(1)(a) Firefighter license plate: provide written evidence of the applicant's current status as a firefighter signed by the fire chief, mayor, or county judge executive;

(2)(b) Purple Heart recipient license plate: provide written proof from the United States Department of Defense or the Veterans Administration that the applicant received a Purple Heart medal;

(3)(c) Street rod license plate: provide sufficient manufacturer's information, title documents, or photographs to prove that the vehicle either was manufactured prior to 1949 or was manufactured to look like it was built prior to 1949;

(4)(d) Fraternal Order of Police license plate: provide a copy of the applicant's current membership card from the Fraternal Order of Police. The reverse side of the membership card shall be signed by the National Secretary of the Grand Lodge, Fraternal Order of Police;

(5)(e) Emergency Management license plate: provide written evidence of the applicant's current status as a member of either a disaster and emergency services organization or a volunteer rescue squad signed by the appropriate mayor, county judge executive, or DES coordinator; or

(6)(f) Masonic license plate: provide a current calendar year

membership card in the Masonic Orders. A member of the Eastern Star affiliation shall not be eligible for the Masonic Order license plate.

Section 14. A special license plate motor vehicle registration that does not have an expiration date established by KRS Chapter 186 shall expire annually.

Section 15. An applicant for a special license plate issued pursuant to KRS 186.041, 186.042, 186.053, 186.172, or 186.174 shall make individual application for the special license plate to be issued to each separate motor vehicle.

Section 16. (1) Special License Plate Committee. The Special License Plate Committee established in the Transportation Cabinet pursuant to KRS 186.164(15)(c) shall

(a) Review and consider the eligibility of each group or organization that applies for a special plate;

(b) Review and consider whether the proposed special plate meets required criteria;

(c) Convene as necessary at the call of the chair in order to address issues related to the design and issuance of special license plates.

(2) The Special License Plate Committee shall be comprised of the following members:

(a) Commissioner of the Department of Vehicle Regulation or a designee, as a nonvoting member;

(b) Deputy Commissioner of the Department of Vehicle Regulation or a designee as chair;

(c) Director of the Division of Motor Vehicle Licensing or a designee;

(d) Assistant Director of the Division of Motor Vehicle Licensing or a designee;

(e) Executive Director, Office of Legal Services or a designee, as a nonvoting member;

(f) A designee selected by the Commissioner of the Department of Vehicle Regulation from within the office of the Commissioner;

(g) Registration Branch Manager of the Division of Motor Vehicle Licensing or a designee.

(3)(a) Three (3) of the voting members of the committee shall constitute a quorum.

(b) A simple majority of the voting members present at a meeting with a quorum shall be required to recommend approval or denial of an application for a special plate.

(4) The chairman shall designate a person to provide a summary of each meeting and present the minutes for review and approval at the next meeting of the committee that has a quorum present.

(5)(a) Upon recommendation of the committee, the commissioner shall issue a written notice of approval or denial within thirty (30) days of the receipt of application.

(b) If the committee requires additional time in which to deliberate and make a recommendation, the thirty (30) day time period may be extended for an additional thirty (30) days, not to exceed an extended time of ninety (90) days from the date of the initial meeting. If an application is held in abeyance pursuant to Section 17(3) of this administrative regulation, the time period shall be tolled until the legislative process is complete.

(6)(a) The committee may request an applicant to appear and make a presentation if questions arise that may include:

(1) The mission of the applicant;

(2) The design and logo of the special license plate; and

(3) Qualifications of the applicant.

(b) An applicant who fails to cooperate with the informational requests made by the committee, shall have his or her application dismissed by the commissioner.

(7) An aggrieved party may appeal the final decision of the commissioner pursuant to KRS 186.164(10).

Section 17. Application Process. (1) A group or organization shall apply to the Office of the Commissioner, Department of Vehicle Regulation, Transportation Cabinet, for a special license plate pursuant to KRS 186.164.

(2)(a) An applicant shall not submit more than one (1) application per calendar year for the consideration of the committee. An application that is denied by the committee and later modified or altered by the applicant may be resubmitted to the committee not less than twelve (12) months from the original date of denial.

(b)1. An application to redesign a special license plate shall be submitted at a minimum of three (3) years from the date of issuance.

2. The redesign shall be approved or denied by the committee based on the criteria established in Section 16.

(3) Prior to final approval of an application, if a member of the General Assembly introduces a bill, files an amendment to a bill, or undertakes any other measure to sponsor a plate that is substantially similar to the plate for which the application is pending, the application shall be held in abeyance pending the outcome of the legislative process. If the bill or amendment becomes law, the application in abeyance shall be moot. If the legislation is withdrawn or is acted upon by the legislature, the application shall proceed with the committee from the point at which it was placed in abeyance. [The application shall proceed with the committee from the point at which it was placed in abeyance. If the bill does not become law the application in abeyance shall be denied].

(4)(a) A group or organization shall obtain a minimum of 900 applications within two (2) consecutive calendar years from the original date of application to the Office of the Commissioner, Department of Vehicle Regulation.

(b) Failure to comply with paragraph (a) of this subsection shall disqualify the group or organization, and its application shall be withdrawn.

(5)(a) A group or organization shall electronically submit the name, address, and county of each individual applicant for a special license plate to the Registration Branch Manager of the Division of Motor Vehicle Licensing.

(b) The group or organization shall submit one (1) payment for its entire group of applicants.

(6) Each group or organization shall be limited to one (1) special plate design.

(7) The committee may consult with law enforcement relating to special license plate issues that may include design and visibility.

(8) The committee may reconsider and change the design of a previously approved special license plate upon good cause, which may include:

(a) Questions or issues involving legibility of the license plate; or

(b) The normal replating cycle during which the design of all license plates may be changed.

(9) The committee shall not consider an application that contains any trademarked or copyrighted statements or material or any statements or phrases that are commonly within the public domain, including short phrases, names, titles, or small groups of words that are considered common idioms of the English language.

Section 18. Audit and Attestation Requirements. (1)(a) Groups or organizations that have the requisite number, 900, of license plates purchased shall submit a Special Plate Donation Affidavit, Form 325 in accordance with KRS 186.164(13) to the Division of Motor Vehicle Licensing.

(b) Accounts shall be audited annually at the expense of the group or organization.

(2)(a) A group or organization that receives \$15,000 or less during its fiscal year shall submit [“Attestation”] form TC 96-324 attesting its compliance with KRS 186.164.

(b) The form shall be submitted to the Division of Motor Vehicle Licensing not later than ninety (90) days following the end of the group or organization's fiscal year.

(3)(a) A group or organization that receives \$15,001 to \$75,000 during its fiscal year shall have an internal or external audit of its account performed.

(b) The results of that audit shall be submitted to the Division of Motor Vehicle Licensing not later than (90) days following the end of the group or organization's fiscal year.

(4)(a) A group or organization that receives \$75,001 or more annually shall have an external audit performed.



(b)1. Groups or organizations that are considered to be budget units in accordance with KRS 43.010(2) shall adhere to KRS 45.149, which gives the Auditor of Public Accounts the first right of refusal to perform audit work.

2. This audit shall be submitted to the Division of Motor Vehicle Licensing not later than ninety (90) days following the end of the group or organization's fiscal year.

Section 19 Incorporation by Reference The following material is incorporated by reference: (1)(a) Form TC 96-15E, "Application for Special License Plate", March[,] 2009;

(b) Form TC 96-182, "Application for Kentucky Certificate of Title and Registration"; revised August[,] 2009;

(c) Form TC 96-324, "Attestation", May[,] 2009;

(d) Form 325, "Special Plate Donation Affidavit", May[,] 2009;

(e) DD Form 1300, "Report of Casualty", United States Department of Defense Instruction Number 1300 18, March[,] 2004; and

(f) Form TC 96-205, "Application for Special Registration Plate for Disabled Persons", [as] revised August[,] 1998.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Vehicle Regulation, Division of Motor Vehicle Licensing, Second Floor, Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

[(2) The special license plate application forms listed below are incorporated by reference. Copies of these forms may be obtained, copied or viewed at the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Vehicle Licensing, 2nd Floor, State Office Building, 601 High Street, Frankfort, Kentucky 40622 or the office of any county clerk. The regular business hours of the Division of Motor Vehicle Licensing are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except holidays. Its telephone number is (502) 564-5301.

(a) TC 96-1, Application for University License Plate as revised February, 1991;

(b) TC 96-7, Application for Fraternal Order of Police Plate as revised June, 1990;

(c) TC 96-11, Application for Street Rod License Plate as revised March 1992;

(d) TC 96-103, Application for Masonic License Plate as revised June, 1992;

(e) TC 96-104, Application for Purple Heart Recipient License Plate as revised November, 1988;

(f) TC 96-106, Application for Military Reserve Plate as revised August, 1991;

(g) TC 96-206, Application for Handicapped Persons, Special Registration Plate as revised May, 1992;

(h) TC 96-207, Application for Volunteer Firefighter Plate as revised July, 1982;

(i) TC 96-208, Application for Prisoner of War Plate as revised May, 1992;

(j) TC 96-216, Statement of Current Service in Kentucky National Guard as revised December, 1983;

(k) TC 96-217, Application for Disabled Veterans Free Certificate of Registration and License Plates, as revised February, 1991;

(l) TC 96-218, Application for Personalized License Plates as revised March, 1990;

(m) TC 96-219, Application for Special Radio Operator License Plate as revised March, 1990;

(n) TC 96-220, Application for Special Legislative Plates as revised March, 1990;

(e) TC 96-221, Application for Special Judiciary Plates as revised March, 1990;

(p) TC 96-222, Application for Dealer Demo License Plate as revised November, 1989;

(q) TC 96-224, Application for Civil Air Patrol as revised October, 1986;

(r) TC 96-227, Application for National Guard Retiree as revised June, 1984;

(e) TC 96-228, Application for Disaster and Emergency Services Plate as revised June, 1984; and

(t) TC 96-310, Application for Pearl Harbor Survivor Plate as

revised June, 1992-

(3) An applicant for one (1) of the special license plates listed in subsection (2) of this section shall complete the appropriate form incorporated by reference and for the following special license plates provide the additional required information:

(a) Volunteer firefighter license plate—written evidence of applicant's current status as a volunteer firefighter signed by the mayor or trustee or county judge/executive (whomever is appropriate);

(b) Military reserve license plate—written proof of membership or prior service in a branch of the United States military reserve;

(c) Purple Heart recipient license plate—written proof from the United States Department of Defense or the Veterans Administration that the applicant is a recipient of a Purple Heart medal;

(d) Civil Air Patrol license plate—a certification that the applicant is a member of the Civil Air Patrol which includes the applicant's Social Security number and the expiration date of the applicant's Civil Air Patrol membership. He shall also present the Civil Air Patrol membership card to the county clerk;

(e) Prisoner of war license plate—written evidence from the United States Department of Defense that:

1. The applicant was a prisoner of war at the time of his imprisonment; or

2. The deceased spouse of the applicant was a prisoner of war at the time of his imprisonment;

(f) Street rod license plate—sufficient manufacturer's information, title documents or photographs to prove that the vehicle either was manufactured prior to 1949 or was manufactured to look like it was built prior to 1949;

(g) Fraternal Order of Police license plate—a copy of the applicant's current membership card from the Fraternal Order of Police. The reverse side of the membership card shall be signed by the National Secretary of the Grand Lodge, Fraternal Order of Police;

(h) Pearl Harbor survivor license plate—written evidence from the Kentucky Chapter of Pearl Harbor Survivors Association that the applicant is a Pearl Harbor survivor;

(i) Disaster and emergency services license plate—written evidence of applicant's current status as a current member of either a disaster and emergency services organization or a volunteer rescue squad signed by the appropriate mayor, county judge/executive or DES coordinator;

(j) Handicapped license plate—evidence that the applicant has been issued a disabled veteran license plate pursuant to KRS 186.041 or that the applicant has provided the proof of handicap required by KRS 186.042(2); and

(k) Masonic license plate—a current calendar year membership card in the Masonic Orders. A member of the Eastern Star affiliation is ineligible for the Masonic Order license plate.

(l) Disabled veterans free certificate of registration and license plates—documentation from the Veterans Administration:

1. Of the seventy (70) percent or greater disability of the applicant; or

2. Of financial assistance given for the motor vehicle purchase or the adaptation of a motor vehicle so that it can be used by a disabled person.

Section 12. The special license plate motor vehicle registrations which do not have an expiration date established by KRS Chapter 186 shall expire each December 31.

Section 13. An applicant for a special license plate issued pursuant to KRS 186.041, 186.042, 186.044, 186.053, 186.1701, 186.1702, 186.172, 186.1721, 186.1723, 186.1731, 186.1732, 186.174, 186.1751, 186.182, 186.185, and Chapter 404 of the 1992 Acts of the General Assembly shall make individual application for the special license plate to be issued to each separate motor vehicle.]

JOE PRATHER, Secretary

APPROVED BY AGENCY: September 10, 2009

FILED WITH LRC: September 14, 2009 at 11 a.m.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-



5238.

**EDUCATION CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(As Amended at ARRS, November 10, 2009)**

**702 KAR 6:010. Local responsibilities.**

RELATES TO: KRS 156.010, 156.031, 156.035, 42 U.S.C. 1751-1769b, 42 U.S.C. 1771-1789

STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.010(5) requires the Department of Education to develop and approve state plans required by federal law as a prerequisite to receiving federal funds for elementary and secondary education. 42 U.S.C. 1751 to 1769b and 42 U.S.C. 1771 to 1789 establish the requirements for the federal school lunch and child nutrition programs. This administrative regulation establishes the responsibilities of school districts and school governing bodies relating to school lunch and child nutrition programs. [This administrative regulation is promulgated under the authority of the Kentucky][State] [Board of][for Elementary and Secondary] [Education's mandate to implement federal education assistance programs and is needed to carry out the Congressional intent of the National School Lunch Act of 1946, the Child Nutrition Act of 1966 and all amendments thereto. Also, it holds a local agency accountable for its program. This administrative regulation describes the local responsibilities of school districts and school governing bodies in the provision of nutritional programs][Reconsideration and refiling of this administrative regulation is required pursuant to KRS 156.031].

Section 1. The operation of all school nutrition[feed-service] programs in the public, private, parochial and state schools shall be the responsibility of the local board of education or the governing body of the schools.

Section 2. Each local board of education or the governing body of a school shall establish written requirements [Rules and administrative regulations shall be developed by local governing bodies] regarding the employment, dismissal, promotion, work assignments, emergency leave, sick leave, vacation leave, retirement, insurance, workmen's compensation and salary schedules providing at least minimum wage in accordance with minimum wage laws.

Section 3. Each local governing body shall establish written requirements [Rules and administrative regulations shall be developed by local governing bodies] regarding purchasing food and equipment, cost of meals, storage and sanitation, and financial accounting and safeguarding of funds. [These rules shall be in compliance with applicable local, state or federal laws, and regulations.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

ELAINE FARRIS, Interim Commissioner

JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: February 13, 2009

FILED WITH LRC: February 13, 2009 at noon

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

**EDUCATION CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(As Amended at ARRS, November 10, 2009)**

**702 KAR 6:020. District school nutrition director.**

RELATES TO: KRS 156.031, 158.852, 160.290, 160.380, 161.020

STATUTORY AUTHORITY: KRS 156.035, 156.070, 156.160[158.852]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.010(5) requires the Department of Education to develop and approve state plans required by federal law as a prerequisite to receiving federal funds for elementary and secondary education. KRS 158.852 requires districts to appoint a school food service director and establishes requirements for the district school food service directors. This administrative regulation establishes requirements for district school nutrition directors. [This administrative regulation is required][needed] [to carry out the Congressional intent of the National School Lunch Act of 1946, the Child Nutrition Act of 1966 and all amendments thereto. This administrative regulation describes the policies and procedures to be followed by the district school nutrition director][Reconsideration and refiling of this administrative regulation is required pursuant to KRS 156.031].

Section 1. [Each][All] [local school district][districts] [shall appoint][determine the need for either a full-time or part-time] [school nutrition][food service] [director. Two (2) or more contiguous districts may appoint one (1) person to fill the role of school nutrition director][If a local board has determined such a need, then the position shall be staffed by the local superintendent].

Section 2. A district[local] school nutrition[feed-service] director shall [be responsible to the local superintendent of schools and shall] work with central office personnel, principals, [and] school based decision making councils, cafeteria[teachers,] managers, and staff[other school food service personnel] to plan, develop, administer, and supervise the school nutrition[feed-services] program on a district-wide basis.

Section 2. A person appointed as a school food service director or a person otherwise responsible for menu planning shall obtain the credentials required by KRS 158.852(2) from the School Nutrition Association (SNA), which was formerly the American School Food Service Association. [3-A person appointed as district school nutrition director or person otherwise responsible for menu planning shall hold the school nutrition specialist (SNS) credential issued by the School Nutrition Association (SNA) (formerly the American School Food Service Association) or be certified at Level 2 by SNA. A person so appointed who is not credentialed or certified at the time of appointment shall be allowed three (3) years from that date to obtain the credential or certification][No person shall be eligible to hold the position of a district school food service director, or receive salary for services rendered in such position, unless he or she meets any certification requirements established by the State Board for Elementary and Secondary Education for this position].

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

ELAINE FARRIS, Interim Commissioner

JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: February 13, 2009

FILED WITH LRC: February 13, 2009 at noon

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

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EDUCATION CABINET  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, November 10, 2009)

702 KAR 6:040. Personnel; policies and procedures.

RELATES TO: KRS 156.010, 156.031, 156.035, 42 U.S.C. [see:] 1751-[see:]1769b, 42 U.S.C. [see:] 1771-1789  
STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.010(5) requires the Department of Education to develop and approve state plans required by federal law as a prerequisite to receiving federal funds for elementary and secondary education. 42 U.S.C. 1751 to 1769b and 42 U.S.C. 1771 to 1789 establish the requirements for the federal school lunch and child nutrition programs. This administrative regulation establishes the requirements for local school nutrition personnel employed by school districts. [This administrative regulation is promulgated under the authority of the Kentucky][State] [Board of][for Elementary and Secondary] [Education's mandate to implement federal education assistance programs and is needed to carry out the Congressional intent of the National School Lunch Act of 1946, the Child Nutrition Act of 1966 and all amendments thereto. This administrative regulation describes the policies and procedures to be followed by a school district in employing local school nutrition][feed service] [personnel.] [Reconsideration and refiling of this administrative regulation is required pursuant to KRS 156.031.]

Section 1. Each school district shall employ school nutrition[feed service] personnel in a procedure consistent with KRS 160.380 and 702 KAR 6.045.

Section 2. Each school district, through its superintendent, shall notify in writing each full-time school nutrition[lunch] employee of the hours, terms and conditions of employment, lines of authority, and general responsibilities. Each district shall include an appropriate service termination policy for both the district and employee.

Section 3. Each school district shall establish and adopt a uniform pay scale for all full-time school nutrition[feed service] employees.

Section 4. Each school district shall provide workers' [workmen's] compensation and fulfill minimum hourly wage rates for school nutrition[feed service] personnel.

Section 5. The superintendent shall cause school nutrition[feed service] personnel to avail themselves of training programs [when such are] offered.

Section 6. Social security participation for school nutrition[feed service] personnel shall be in keeping with social security policies for other nonprofessional personnel.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

ELAINE FARRIS, Interim Commissioner

JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: February 13, 2009

FILED WITH LRC: February 13, 2009 at noon

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

EDUCATION CABINET  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, November 10, 2009)

702 KAR 6:045. Personnel; school nutrition[feed service] employee qualifications.

RELATES TO: KRS 156.031, 156.160  
STATUTORY AUTHORITY: KRS 156.160  
NECESSITY, FUNCTION, AND CONFORMITY: [KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990.] KRS 156.160 requires the [State] Board of[for Elementary and Secondary] Education to adopt administrative regulations deemed necessary or advisable for the protection of the physical welfare and safety of public school children. This administrative regulation establishes [prescribes] necessary qualifications and training of beginning school nutrition[feed service] employees.

Section 1. A person shall not work, or be allowed to [No person shall work, or be allowed to ee] work, in a school kitchen unless he or she is physically and mentally able to do so safely and satisfactorily [and meets the requirements of 902 KAR 45.005, Section 11].

Section 2. (1) Prior to [A condition of] initial employment in a school kitchen, an employee shall:

(a) Complete [shall be completion of] the beginning school nutrition[feed service] personnel training course prescribed by the Kentucky[State] Board of[for Elementary and Secondary] Education; and

(b) Be issued [issuance of] a Kentucky school nutrition[feed service] employee certificate by the chief state school officer, based upon evidence submitted to the Kentucky Department of Education, Division of Nutrition and Health[School Feed] Services, from a certified instructor that all training requirements have been fulfilled,

(2) [under the provisions of this administrative regulation.] The prescribed training course for certification of beginning school nutrition[feed service] personnel shall consist of the following instructional units and minimum instructional clock hours:

(a)[(1)] School food service rules and administrative regulations - 1 hour;

(b)[(2)] Sanitation - 1 hour;

(c)[(3)] Safety and first aid - 1 hour;

(d)[(4)] Food preparation and merchandising - 1 hour;

(e)[(5)] Equipment use and care - 1 hour;

(f)[(6)] Efficient use of resources - 1 hour; and

(g)[(7)] Nutrition education - 1 hour.

Section 3. Those incumbent school nutrition[feed service] personnel who voluntarily complete the beginning school nutrition[feed service] personnel training course shall also be issued a Kentucky school nutrition[feed service] certificate as prescribed in Section 2 of this administrative regulation.

Section 4. All certificate holders shall be required to renew their certificates annually by satisfactorily completing a minimum of four (4) hours of in-service training conducted by a certified instructor and relevant to the curriculum established under the standards set forth in Section 2 of this administrative regulation.

Section 5. (1) The local school food authority may issue a temporary school nutrition[feed service] employee permit if it is necessary to initially employ an applicant on an emergency basis as a replacement or additional staff position, if [provided that] the applicant meets the qualifications sets forth in Section 1 of this administrative regulation.

(2) This permit shall be valid only for a period of forty (40) work days and shall be nonrenewable.

(3) In order to continue working after this forty (40) day period

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has expired, the applicant shall fulfill the requirements of Section 2 of this administrative regulation.

Section 6. (1) A beginning substitute school nutrition employee shall be issued a temporary permit valid ~~[Beginning substitute school nutrition][feed service] [personnel shall fulfill the following requirements:~~

~~(1) Be employed with a temporary permit]~~ for forty (40) work days from the date of employment[;]

~~(2) A substitute certificate shall be issued to the substitute personnel upon completion of four (4) hours of training as required by~~ (defined in) Section 2 of this administrative regulation in the following areas:

- (a) Equipment use and care;
- (b) Safety and first aid,
- (c) Sanitation; and
- (d) Food preparation and merchandising.

~~(3) Annual~~ renewal of this certificate shall be based upon satisfactorily completing two (2) hours of training in any of the areas listed in Section 2 of this administrative regulation.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

ELAINE FARRIS, Interim Commissioner  
JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: February 13, 2009

FILED WITH LRC: February 13, 2009 at noon

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

**EDUCATION CABINET**  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, November 10, 2009)

### 702 KAR 6:075. Reports and funds.

RELATES TO: KRS 156.010, 156.031, 156.035, 156.100, 156.200, 156.480, 42 U.S.C. 1751-1969b, 42 U.S.C. 1771-1789, 7 C.F.R. 210.9, 7 C.F.R. 210.14, 7 C.F.R. 210.15

STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.010(5) requires the Department of Education to develop and approve state plans required by federal law as a prerequisite to receiving federal funds for elementary and secondary education. 42 U.S.C. 1751 to 1769b and 42 U.S.C. 1771 to 1789 establish the requirements for the federal school lunch and child nutrition programs. This administrative regulation establishes requirements ~~[This administrative regulation is promulgated under the authority of the Kentucky][State] [Board of][for Elementary and Secondary] [Education's mandate to implement federal education assistance programs and is needed to carry out the Congressional intent of the National School Act of 1946, the Child Nutrition Act of 1966 and all amendments thereto. This administrative regulation is] necessary to properly protect all funds accruing to the local school nutrition[feed service] program.~~

Section 1. A local board of education shall be responsible for the safeguarding of all funds accruing to its school nutrition[feed service] program and shall adopt a plan for handling those funds and bonding all personnel who receive or handle the ~~[such]~~ funds.

Section 2. All revenue received by the school nutrition[feed service] program, including~~[, but not limited to,]~~ funds received as payments for meals by students and adult, federal and state reimbursements, and any interest earned on deposits of federal and state reimbursements, shall be used only for the operation or im-

provement of the school nutrition[feed service] program.

Section 3. School nutrition[feed service] funds shall not be used to purchase land or acquire or construct buildings.

Section 4. Financial records ~~[All school districts][schools] [approved for participation in the federal school nutrition][feed service] [program(s) shall make required monthly reports as prescribed by][using approved forms] to [the state Department of Education. A copy of the report][forms] [submitted to the Department of Education, as well as other financial records and reports] pertaining to the school nutrition[feed service] program and applications for free and reduced price meals shall be kept by the [school or] local board of education for a period of three (3) fiscal years after the close of the fiscal year applicable to the [such] records and those shall be subject to audit by appropriate state or federal officials.~~

Section 5. All school meals for which federal reimbursement is claimed shall be priced as a complete unit.

Section 6. A local school nutrition[feed service] program shall be operated on a nonprofit basis, ~~[where] Actual cash balances shall not exceed three (3) months' operating balance. [Section 7. The forms referenced in Section 4 of this administrative regulation are incorporated by reference. The effective date of the forms is October 10, 1980. A copy of the form may be obtained by contacting the Division of School Food Services, attention: Betty Williamson, 564-4390. The material is available for inspection and copying between the hours of 8 a.m. to 4:30 p.m. EST in Room 614, Capital Plaza Tower, Frankfort, Kentucky.]~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

ELAINE FARRIS, Interim Commissioner  
JOSEPH BROTHERS, Chairperson  
APPROVED BY AGENCY: February 13, 2009  
FILED WITH LRC: February 13, 2009 at noon

**EDUCATION CABINET**  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, November 10, 2009)

702 KAR 6:090. Minimum nutritional standards for foods and beverages available on public school campuses during the school day; required nutrition and physical activity reports.

RELATES TO: KRS 156.035, 156.160, 156.200, 158.854(1), 158.856, 160.345

STATUTORY AUTHORITY: KRS 156.160, 158.854(1)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.854(1) requires the Kentucky Board of Education to promulgate an administrative regulation to specify the minimum nutritional standards for all foods and beverages that are sold outside the National School Breakfast and National School Lunch programs, whether in vending machines, school stores, canteens, or a la carte cafeteria sales. KRS 158.854(1) requires that the administrative regulation address serving size, sugar, and fat content of the foods and beverages. This administrative regulation establishes the minimum nutritional standards for food and beverages available on the school campus during the school day and establishes reporting requirements for local school districts for nutrition and physical activity.

Section 1. Beverages. During the period of time beginning thirty (30) minutes after the last lunch period until the end of the last instructional period, a beverage offered for sale through a vending machine, school store, canteen, or fundraiser on school

property shall:

- (1) Be a:
  - (a) Fluid unflavored or flavored milk that is no more than one (1) percent milk fat,
  - (b) Plain or flavored, noncaloric, noncarbonated water;
  - (c) 100% fruit or vegetable juice or any combination of both totaling 100%; or
  - (d) Any other beverage that contains no more than ten (10) grams of sugar per serving, except this limit shall not apply to 100% fruit or vegetable juice or any combination of both equaling 100%; and
- (2)(a) Except as provided in paragraph (b) of this subsection, not exceed a volume size of seventeen (17) ounces, except for plain or flavored, noncaloric, noncarbonated water; or
- (b) For sales to middle school or high school students (grade six (6) through twelve (12)), the volume size of a beverage shall not exceed twenty (20) ounces.

Section 2. Food. During the period beginning thirty (30) minutes after the last lunch period until the end of the last instructional period, a food item offered for sale through a vending machine, school store, canteen, or fundraiser on school property shall meet the requirements established in this section. ~~[following standards:]~~

- (1) Calories from fat shall not exceed thirty (30) percent, excluding reduced fat (two (2) percent milk-fat or less), cheese, nuts, seeds, and nut butters.
- (a) This shall be determined by dividing the calories from total fat by the total calories and multiplying by 100.
- (b) If the calories from fat are not available, the grams of fat shall be multiplied by nine (9) to equal calories from fat.~~[:]~~
- (2) Calories from saturated fat shall not exceed ten (10) percent.

(a) This shall be determined by dividing the calories from saturated fat by the total calories and multiplying by 100.

(b) If calories from saturated fat are not available, the grams of saturated fat shall be multiplied by nine (9) to equal calories from saturated fat.~~[:]~~

(3) Calories from sugar shall not exceed thirty-two (32) percent by weight.

(a) This shall be determined by dividing the grams of sugar by the gram weight of the product and multiplying by 100. This shall include both naturally-occurring and added sugars.

(b) The grams of sugar shall not exceed fourteen (14) grams.

(c) The limit established in this subsection shall not apply to fresh, frozen, canned or dried fruits and vegetables.~~[:]~~

(4)(a) Chips, cereals, crackers, baked goods, and other snack items shall not contain more than 300 milligrams of sodium per serving.

(b) Pastas, meats, and soups shall not contain more than 450 milligrams of sodium per serving.

(c) Pizza, sandwiches, and main dishes shall not contain more than 600 milligrams of sodium per serving.~~[:]~~

(5) The portion or pack size for chips, crackers, popcorn, cereal, trail mix, nuts, seeds, or jerky shall not exceed two (2) ounces.~~[:]~~

(6) The portion or pack size for cookies shall not exceed one (1) ounce.~~[:]~~

(7) The portion or pack size for cereal bars, granola bars, pastries, muffins, doughnuts, bagels, or other bakery-type items shall not exceed two (2) ounces.~~[:]~~

(8) The portion or pack size for nonfrozen yogurt shall not exceed eight (8) ounces.~~[: and]~~

(9) The portion or pack size for frozen dessert items, including low-fat or fat free ice cream, frozen fruit juice bars, or frozen real fruit items, shall not exceed four (4) ounces.

Section 3. A la carte Items. A food or beverage item offered for sale as an a la carte item on the cafeteria line during the serving of breakfast or lunch shall meet the following standards:

- (1) A beverage shall meet the standards established in Section 1 of this administrative regulation; and
- (2) A food item shall meet the standards established in Section 2 of this administrative regulation, except schools may offer for a la

carte sale any item that is creditable under the School Breakfast or National School Lunch Program meal patterns as set forth in 7 C.F.R. 220.8 and 210.10, respectively.

Section 4. If a school did ~~[does]~~ not have a school breakfast program on February 3, 2006 ~~[the effective date of this administrative regulation]~~, the school may conduct a breakfast food and beverage activity that:

- (1) Involves students and is intended as a student learning opportunity;
- (2) Offers only food and beverage items that meet the minimum nutritional standards of KRS 158.854 and Sections 1 and 2 of this administrative regulation; and
- (3) Concludes at least three (3) hours prior to the first lunch period.

Section 5. Local District Nutrition Program Report. (1)(a) A school nutrition~~[food service]~~ director of the local district shall complete the assessment of the nutrition program required under KRS 158.856 and issue a report ~~[for the 2005-2006 school year]~~ at least sixty (60) days prior to the public forum required by KRS 158.856(5).

(b) The director may issue the report via posting to the district Web site.

(c) A local district superintendent shall submit a summary of the findings and recommendations of the nutrition report as required by KRS 158.856(6) to the Kentucky Department of Education by May 1, 2006, and by May 1 of each succeeding year.

(2) If the Department of Education completes review of a district's nutrition program during the school year prior to the deadline established in subsection (1) of this section, the report and recommendations of that review may constitute the district's annual assessment and report issued in accordance with subsection (1) of this section.

Section 6. Student Physical Activity. (1) A local district superintendent shall evaluate the student physical activity environment, including the amount of time and types of physical activity provided in the elementary schools, as required in KRS 160.345(11) and release the report at least sixty (60) days prior to the public forum required by KRS 158.856(5).

(2) A local district superintendent shall submit the report on physical activity, including a summary of findings and recommendations to the Department of Education by May 1, 2006, and by May 1 of each succeeding year.

(3) The superintendent may release the report via posting to the district Web site.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

ELAINE FARRIS, Interim Commissioner

JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: February 13, 2009

FILED WITH LRC: February 13, 2009 at noon

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

EDUCATION CABINET  
Kentucky Board of Education  
Department of Education

(As Amended at ARRS, November 10, 2009)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, ~~[158.060]~~ 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, [158.060,] 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.030 establish the age for compulsory school attendance. [KRS 158.060 defines the school day and month and make-up of school days missed.] KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. [(1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year on or before May 15 of each year. The calendar shall:

- (a) Establish the opening and closing dates of the school term;
  - (b) Establish beginning and ending dates of each school month;
  - (c) State the number of days of instruction;
  - (d) Establish the minimum length of the instructional day;
  - (e) State the instructional time the local board of education requires for kindergarten if in excess of the minimum three (3) hours of instruction;
  - (f) State whether the additional instructional time, if any, is planned to be banked to make up for full days which may be missed due to an emergency; and
  - (g) Designate days on which schools shall be dismissed.
- (2) Opening day, for planning activities without the presence of pupils, shall be scheduled to occur prior to the first instructional day of the school term.
- (3) Closing day, for planning activities without the presence of pupils, shall be scheduled to occur following the completion of the last instructional day of the school term.
- (4) Local school districts shall plan appropriately for the make-up of instructional time missed due to emergency. In addition to the minimum 1,050-hour instructional term, the school calendar shall include days equal to the greatest number of days missed system-wide in the local school district over the preceding five (5) school years.
- (5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.
- (6) An up-to-date master (bell) schedule shall be on file in a school. Up-to-date master (bell) schedules for each school in a district shall be on file in the district's central office.

Section 2. (1) The local board of education shall file each adopted school calendar with the Department of Education no later than June 30 of each year. The local school district shall not be paid any installment of its SEEK program allotment until the school calendar has been approved by the Department of Education.

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar shall be submitted for approval to the Department of Education no later than June 30 of each year.

Section 3. (1) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall be allowed a total of five (5) hours missed each school year that do not have to be made up, and that occurred as a result of school days shortened due to emergency. These hours shall be reported to the department on the amended school calendar.

(3) Except as provided in subsection (2) of this section, all time missed on school days shortened due to emergency shall be made

up and shall be reported to the Department of Education on the amended school calendar.

Section 4. (1) A school district shall not be considered for disaster days unless the district has missed more than twenty (20) regular instructional days system-wide. The local school district shall make up at least the first twenty (20) regular instructional days missed in a school year by adding those hours back into the school calendar.

(2) A local board of education request for district-wide disaster days shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 5. A local board of education may request disaster days if one (1) school, or part of the district, is forced to miss school on a particular day due to an emergency. The request shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 6. (1) The following shall constitute the activities to be conducted during the instructional school day.

(a) Courses and content included in the "Program of Studies for Kentucky Schools, Grades Primary 12", pursuant to 704 KAR 3.303;

(b) Courses and activities included in the local school district program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3.305;

(c) Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(d) A maximum of five (5) minutes passing time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.

(2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the instructional school day, as described in subsection (1)(c) of this section.

(3) Each school shall have available a master (bell) schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules provided.

Section 7. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a student entry and exit log at each school.

(2) Daily attendance of pupils in middle and high school shall be determined by taking attendance by class period and maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed) and other information required by the local board of education. For elementary students who are signed out, the student entry and exit log shall also include a signature of:

- (a) A parent;
- (b) A legal guardian; or
- (c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;

(c) The pupil is participating in an off-site virtual high school class or block. A student may be counted in attendance for a virtual high school class or block for the year or semester in which the

student initially enrolled in the class or block if the student demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 5(2)(b) or (3) [4(3)].

(d) The pupil's mental or physical condition prevents or renders inadvisable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the home/hospital program shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;

(e) The student has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days; ~~or~~

(f) The student has an individual education plan (IEP) that requires less than full-time instructional services; ~~or~~

(g) The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 5(2)(b) [4(2)(b)] and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305, Section 4(4). A student may be counted in attendance for performance-based credit for a class or block for the year or semester in which the student initially enrolled in the class or block if the student demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 5(3) [4(3)], or

(h) The pupil participates in a school that is authorized by the Commissioner of Education to design and deliver an educational program so that all graduation requirements are based on student proficiency of standards and performance, rather than time and Carnegie units, as authorized in 704 KAR 3:305, Section 5[4].

(5) Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 2[8] The guidelines in this section [subsection] shall be used to calculate student attendance for state funding purposes through June 30, 2010

(1) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent sixty (60) minutes or less of the regularly-scheduled school day for the pupil's grade level.

(3) The actual percentage of the school day shall be recorded for attendance of a pupil absent for more than sixty (60) minutes of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent 100 percent of the regularly-scheduled school day for the pupil's grade level.

(5) The percentages described in this section [subsection] shall apply to the regularly-scheduled school day approved by the local board of education and shall be applicable to entry level through grade level twelve (12).

Section 3. The guidelines in this section [subsection] shall be used to calculate student attendance for state funding purposes after June 30, 2010.

(1) A full day of attendance shall be recorded for a pupil who is in attendance at least sixty-five (65) [more than 84] percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent less than 35 percent of the regularly-scheduled school day for the pupil's grade level.

(3) A half day absence shall be recorded for a pupil who is absent 35 percent to 84 percent of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent more than 84 percent of the regularly-scheduled school day for the pupil's grade level.

Section 4[9] A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060, or local board of education policy. The time a student is in attendance shall be included in calculating the district's average daily attendance.

Section 5[10] A local board of education may permit an arrangement in which a pupil pursues part of the student's education under the direction and control of one (1) public school and part of the student's education under the direction and control of another public or nonpublic school. The time a student is served by public school shall be included when calculating the district's average daily attendance.

Section 6[11] If a local school district, under the provisions of KRS 157.360(6), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 7[12] (1) If a local school district enrolls a pupil in the entry level program who will not be five (5) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance

(2) If a local school district enrolls a pupil in the second level of the primary program who will not be six (6) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the following conditions:

(a) The local board of education shall have determined that the student is eligible for enrollment into the second level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:

1. Anecdotal records;
2. A variety of student work samples, including evidence of student self-reflection; and
3. Standardized test results;

(b) The team shall be composed of three (3) members who have knowledge of the student's developmental skills and abilities. Team members shall be chosen from these categories:

1. Teachers;
2. Parents;
3. Psychologists;
4. Principals; or
5. District specialists;

(c) At least one (1) team member shall represent the district office and have an understanding of early childhood development and knowledge of developmentally-appropriate practices; and

(d) If a student is recommended by the local board of education for accelerated placement into the second level of the primary program, the district shall forward that recommendation to the department for approval with:

1. A list of data sources used in making the decision;
2. A list of all individuals who submitted the data sources;
3. A list of team members; and
4. The data needed to create a pupil attendance record.

(3) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years of age who wishes to enroll. The days attended after the student's 21st birthday shall not be included in the calculation of the district's average daily attendance.

Section 8[13] The Growth Factor Report for the first two (2) school months of the school year pursuant to KRS 157.360(8) shall be submitted to the Department of Education within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.

Section 9[14] (1) A copy of the written agreement local boards of education execute for enrollment of nonresident pupils as pro-

vided by KRS 157.350(4) shall be submitted to the Department of Education no later than February 1 of the year prior to the school year to which it will apply. The written agreement shall include the specific terms to which the districts have agreed. A list of the names of all nonresident pupils enrolled in the district covered by the agreement shall be submitted to the Department of Education not later than November 1 of the school year covered by the agreement.

(2) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be submitted to the Department of Education no later than June 30 of each year.

Section 10[46:] The Superintendent's Annual Attendance Report (SAAR) shall be considered the request to substitute prior year's average daily attendance for up to ten (10) designated weather-related low attendance days, and certification that the low attendance was due to inclement weather in accordance with KRS 157.320(17). Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 11[46:] (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, student entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 12[47:] The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew as a W06, W07, W13, W16 or W18 during the 2004-2005 school year or as a W24 or W25 for previous school years;

(4) R01 - A pupil received from another grade[hemerem] in the same school;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R06 - A pupil reentering the school after dropping out, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(7) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;

(8) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools) in Kentucky during the current school year;

(9) W01 - A pupil transferred to another grade[hemerem] in the same school. The reentry code to use with W01 shall be R01;

(10) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(11) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 1(1), accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the student is too ill to participate in regular school attendance or local homebound instructional services, or if the student

has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;

(12) W08 - A pupil withdrawn due to death;

(13) ~~W09 - A pupil who has graduated or completed a 504 plan or an individual education plan prior to the end of the school term or year;~~

(14) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(14)(16) W17 - An entry level student in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5.060;

(15)(16) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R20;

(16)(17) W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;

(17)(18) W22 - A pupil who has transferred to another public school district and for whom a request for student records has been received or enrollment has been substantiated, or a pupil who is known to have moved out of the United States;

(18)(19) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;

(19)(20) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated;

(20)(24) W25 - A pupil who is at least sixteen (16) years of age and has dropped out of public school;

(21)(22) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate; [and]

(22)(23) W27 - a pupil[student] who has withdrawn from school and subsequently received a GED;

(23) W28 - a pupil who has reached the maximum age for education services without receiving a diploma or certificate of attainment;

(24) C01 - a pupil who completes the school year in the school of the most current enrollment;

(25) G01 - a pupil who graduates in less than four (4) years;

(26) G02 - a pupil who graduates in four (4) years;

(27) G03 - a pupil who graduates in five (5) or more years;

(28) G04 - a pupil who graduates in six (6) or more years; and[and:]

(29) NS - a pupil who completed the prior year with a C01 and was expected to enroll in the district but did not enroll by October 1 of the current year whose enrollment elsewhere cannot be substantiated. [-]

Section 13[48:] (1) For a student who has been suspended, a code of S shall be used to indicate the days suspended.

(2) Suspension shall be considered an unexcused absence.

Section 14. The ethnicity of each student shall be designated as either Hispanic/Latino or not Hispanic/Latino. The designation shall be Hispanic/Latino if the person is of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture of origin regardless of race.

Section 15 One or more of[49:] the following racial[ethnic] codes shall be used to indicate the racial category[ethnic origin] of pupils:

(1) 1 - White ~~[(not-Hispanic)]~~ - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(2) 2 - Black ~~[(not-Hispanic)]~~ - A person having origins in any of the black racial groups of Africa;

(3) ~~3 - Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin regardless of race;~~



(4) 4 - Asian [or Pacific Islander] - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(4)(5) 5 - American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition; and

(5) 7- Pacific Islander – A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

[(6)-6-Other.]

Section 16.20- (1) The Student Dropout Questionnaire shall be completed during the one (1) hour counseling session mandated in accordance with KRS 159.010. Dropout data shall be reported to the Department of Education on the Nonacademic [non-academic data] Report that is submitted to the Department each year [Information obtained from this survey shall be submitted to the Department of Education on the local Superintendent's Annual Attendance Report no later than June 30 of each year].

(2) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his designee pursuant to KRS 159.170, and shall be maintained in the student's permanent file.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Home/Hospital Program Form", 2008-2009;

(b) "Student Dropout Questionnaire", December 2000;

(c) "Growth Factor Report", November 2009;

(d) "Superintendent's Annual Attendance Report (SAAR)", November 2009; and

(e) "Nonacademic Report", October 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Finance, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Section 21—Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Growth Factor Report", June 2004;

(b) "Superintendent's Annual Attendance Report", June 2004, and

(c) "Student Dropout Questionnaire", December 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Finance, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

KEVIN M. NOLAND, Interim Commissioner

JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: June 15, 2009

FILED WITH LRC: June 17, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 28, 2009, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows the Kentucky Department of Education to administer attendance calculations for Kentucky's local school districts. The regulation also defines entry and withdrawal codes. In addition, the demographic data captured at the time of enrollment includes the race of the student.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.070, 156.160, 157.320, 158.060 and 158.070 that set forth the Kentucky Board of Education's responsibility to establish a attendance regulations used by all local school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for school attendance required in KRS 156.070, 156.160, 157.320, 158.060 and 158.070.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics how attendance is to be calculated in local school districts per KRS 156.070, 156.160, 157.320, 158.060 and 158.070.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: These changes reflect more current terminology and clarify definitions that have resulted in misunderstanding of current regulation including clarification of Daily Attendance, Enrollment Codes, and Ethnicity and Race Codes. Ethnicity and Race codes will change to require identification per the Federal Guidelines. Inclusion of graduation codes will streamline the calculation of early graduation rates, which is a required component of NCLB reporting.

(b) The necessity of the amendment to this administrative regulation: Revising 702 KAR 7:125 should result in clearer guidance to local districts in the area of attendance reporting. Superintendents have requested the change in the daily attendance calculation as a means to streamline the attendance reporting process at the local district level. This should support our efforts to reach proficiency by 2014 by making this process less time consuming and reducing errors.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statutes with updated guidance as a means to improve data quality for state and federal reporting purposes and streamline the reporting process at the local school district level.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specifics for school attendance requirements throughout the state.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts in Kentucky and supporting staff in the Kentucky Department of Education. This change could increase local districts average daily attendance (ADA) calculation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment will update the regulation to assist with the reporting process at the local district level, and comply with new federal reporting requirements.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts will abide by the requirements set forth. Kentucky Department of Education staff will continue to review data submitted by school districts and report as required to state and federal agencies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky school districts will have the requested guidance to streamline and support the attendance



process at the local district level. The Department of Education will have information required for state and federal reporting purposes.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: proposed amendment does not result in additional aggregate costs.

(b) On a continuing basis: The proposed amendment does not result in additional aggregate costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary as the SEEK funding formula remains contingent upon current appropriated amounts.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding is necessary to implement.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts and the Kentucky Department of Education

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.160, 157.320, 158.060 and 158.070.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This change could increase individual local districts' average daily attendance (ADA) calculation, thus increasing SEEK payments to districts, however, any increases will still remain subject to the aggregate SEEK appropriation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This change could increase individual local districts' average daily attendance (ADA) calculation, thus increasing SEEK payments to districts, however, any increases will still remain subject to the aggregate SEEK appropriation, thus no change in aggregate state expenditures, but a possible net increase in local district revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This change could increase individual local districts' average daily attendance (ADA) calculation, thus increasing SEEK payments to districts, however, any increases will still remain subject to the aggregate SEEK appropriation, thus no change in aggregate state expenditures, but a possible net increase in local district revenue.

(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost to administer or implement.

(d) How much will it cost to administer this program for subsequent years? The proposed amendment will require no additional cost to administer or implement.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### EDUCATION CABINET Kentucky Board of Education Department of Education

(As Amended at ARRS, November 10, 2009)

#### 702 KAR 7:140. School [district] calendar.

RELATES TO: KRS 158.060, 158.070

STATUTORY AUTHORITY: KRS 158.060, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.060 defines the school day and month and requires the board to promulgate administrative regulations governing the make-up of school days missed. KRS 158.070 defines the school term and requires the board to promulgate administrative regulations for year-round school program calendars, governing the use of school days, and establishing school calendars. This administrative regulation establishes the requirements for school districts to follow regarding school calendars.

Section 1. (1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year on or before May 15 of each year. The calendar shall:

(a) Establish the opening and closing dates of the school term;  
(b) Establish beginning and ending dates of each school month;

(c) State the number of days of instruction;  
(d) Establish the minimum length of the instructional day;  
(e) State the instructional time the local board of education requires for kindergarten if in excess of the minimum three (3) hours of instruction;

(f) State whether the additional instructional time, if any, is planned to be banked to make up for full days which may be missed due to an emergency; and

(g) Designate days on which schools shall be dismissed.

(2) Opening day, for planning activities without the presence of pupils, shall be scheduled to occur prior to the first instructional day of the school term.

(3) Closing day, for planning activities without the presence of pupils, shall be scheduled to occur following the completion of the last instructional day of the school term.

(4) Local school districts shall plan appropriately for the make-up of instructional time missed due to emergency. In addition to the minimum 1,050 hour instructional term, the school calendar shall include days equal to the greatest number of days missed system-wide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.

(6) An up-to-date master (bell) schedule shall be on file in a school. Up-to-date master (bell) schedules for each school in a district shall be on file in the district's central office.

Section 2. (1) The local board of education shall file each adopted school calendar with the Department of Education no later than June 30 of each year. The local school district shall not be paid any installment of its SEEK program allotment until the school calendar has been approved by the Department of Education.

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar shall be submitted for approval to the Department of Education no later than June 30 of each year.

Section 3. (1) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall be allowed a total of five (5) hours missed each school year that do not have to be made up, and that occurred as a result of school days shortened due to

emergency. These hours shall be reported to the department on the amended school calendar.

(3) Except as provided in subsection (2) of this section, all time missed on school days shortened due to emergency shall be made up and shall be reported to the Department of Education on the amended school calendar.

Section 4. (1) A school district shall not be considered for disaster days unless the district has missed more than twenty (20) regular instructional days system-wide. The local school district shall make up at least the first twenty (20) regular instructional days missed in a school year by adding these hours back into the school calendar.

(2) A local board of education request for district-wide disaster days shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 5. A local board of education may request disaster days if one (1) school, or part of the district, is forced to miss school on a particular day due to an emergency. The request shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 6. (1) The following shall constitute the activities to be conducted during the instructional school day:

(a) Courses and content included in the "Program of Studies for Kentucky Schools, Grades Primary-12", pursuant to 704 KAR 3:303;

(b) Courses and activities included in the local school district program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3:305;

(c) Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(d) A maximum of five (5) minutes passing time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.

(2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the instructional school day, as described in subsection (1)(c) of this section.

(3) Each school shall have available a master (bell) schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules provided.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

KEVIN M. NOLAND, Interim Commissioner

JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: June 15, 2009

FILED WITH LRC: June 17, 2009 at 9 a.m.

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

**EDUCATION CABINET**  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, November 10, 2009)

704 KAR 4:020. School health services.

RELATES TO: KRS 156.160(1)(g), (h), (l), 156.502(f).

161.145, 214.034, 29 C.F.R. 1910.1030

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)[, 156.502, 214.034]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1)(g) requires the Kentucky Board of Education to promulgate [adept] administrative regulations governing medical inspection, physical and health education and recreation, and other [rule-and] administrative regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children. KRS 156.160(h) and (l) require the board to promulgate administrative regulation governing a required vision examination and a dental screening or examination. This administrative regulation establishes standards and criteria for preventative health care examinations at the local school district level.

Section 1. School Employee Medical Examinations. (1) Except as provided in subsection (2) of this section, a local board of education shall require a medical examination of each certified or classified employee, including each substitute teacher, that:

(a) is conducted prior to initial employment; and

(b) includes [A local board of education shall require a medical examination of each certified and classified employee, including each substitute teacher, prior to initial employment that shall include] a tuberculosis (TB) risk assessment.

1.[(a)] If the individual is identified by that assessment as being at high risk for TB, the individual shall be required to undergo the administration of a tuberculin skin test (TST).

2.[(b)] The TB risk assessment shall be performed and reported by a physician, an advanced registered nurse practitioner, a physician's assistant, or a registered nurse.

(2) The medical examination requirement shall not apply to school bus drivers who are covered by 702 KAR 5.080.

(3) A local board of education may require by policy that a school employee physical examination be conducted no earlier than a ninety (90) day period prior to initial employment.

(4) A medical examination shall be reported on the form, "Medical Examination of School Employees".

(5) A person who tests positive for TB shall be required to comply with the directives of the local board of health and the Kentucky Department for Public Health for further evaluation and treatment of the tuberculosis infection.

(6)(a) Following the required medical examination for initial employment and any subsequent examinations as may be required for positive tuberculin reactors, a school district employee other than a bus driver shall submit to the local school superintendent the completed Medical Examination of School Employees from required by subsection (4) of this section [a statement indicating the employee's medical status].

(b) The medical examination shall be performed and signed for by a physician, physician assistant, or an advanced registered nurse practitioner.

(7) Documentation of a tuberculin skin test and chest x-ray, if performed, shall include:

(a) The date given;

(b) Type of test;

(c) Millimeters of induration;

(d) Date read and by whom; and

(e) Date x-ray taken and results as related to tuberculosis status.

(8)(a)1. A local board of education shall require all school personnel exhibiting symptoms of chronic respiratory disease to undergo a tuberculosis (TB) risk assessment and examinations as indicated.

2. The evaluation and any recommended treatment for tuberculosis infection shall be based upon the directives of the local board of health and the Kentucky Department for Public Health.

(b) An employee exposed to infectious tuberculosis shall be tested and, if necessary, treated for tuberculosis infection according to the directives of the local board of health.

(c) In a county with an incidence of cases of active tuberculosis that is equal to or greater than the national average[,] as established by the Department for Public Health, Division of Epidemiology

gy, Tuberculosis Control Program[,] the local board of health may, with the approval of the Kentucky Department for Public Health, require more extensive testing of school district employees for tuberculosis.

Section 2. Preventative Health Care Examinations. (1)(a) A local board of education shall require a preventative health care examination of each child within one (1) year prior to the child's initial admission to school.

(b) A second examination shall be required within one (1) year prior to entry into the sixth grade.

(c) A third examination may be required by policy of the local board of education within one (1) year prior to entry into the ninth grade.

(2) An out-of-state transfer student shall be required to submit documentation of a preventative health care examination.

(3) A local school board may extend the deadline by which to obtain a preventative health care examination, not to exceed two (2) months.

(4) A preventative health care examination shall be performed and signed for by a physician, an advanced registered nurse practitioner, a physician's assistant, or by a health care provider in the early periodic screening diagnosis and treatment programs.

(5) A preventative health care examination shall be reported on the form Preventative Health Care Examination Form, and shall include:

- (a) A medical history;
- (b) An assessment of growth and development and general appearance;
- (c) A physical assessment including hearing and vision screening; and
- (d) Recommendations to the school regarding health problems that may require special attention in classroom or physical education activities.

(6)(a) A vision examination shall be reported on the form, Kentucky Eye Examination Form for School Entry.

(b)(a) A dental screening or examination [or screening] shall be reported on the form, Kentucky Dental Screening/Examination Form for School Entry.

(7) A record of immunization shall be submitted on an Immunization Certificate Form, EPID 230.

(8) A local school district shall establish a plan for implementation and compliance required for the sixth grade preventative health care examination.

(9) A valid Immunization Certificate Form, EPID 230, shall be on file within two (2) weeks of the child's enrollment in school.

(10)(a) A board of education shall adopt a program of continuous health supervision for all school enrollees.

(b) Supervision shall include scheduled, appropriate screening tests for vision, hearing, and scoliosis.

(11) A local spinal screening program for scoliosis, pursuant to subsection (10)(b) of this section, shall include:

- (a) Training sessions for teachers or lay volunteers who will be doing the screening;
- (b) Obtaining parental permission for scoliosis screening;
- (c) Established screening times, at least in grades six (6) and eight (8) and appropriate procedures and referral criteria;
- (d) Mandated education of students regarding scoliosis screening; and

(e) Required referral of all children with abnormal screening results for appropriate diagnosis and treatment and follow-up on these referrals. Local referral and follow-up procedures shall include:

- 1. Notification of parents of students who need further evaluation by a physician;
- 2. Tracking referrals to determine whether all children with abnormal screening results receive appropriate diagnosis and treatment; and
- 3. Reporting of data on screening, referral, and follow-up tracking to the Department of Education.

(12) The Department of Education shall:

- (a) Monitor the spinal screening and referral programs provided by local boards of education;
- (b) Provide consultation and technical assistance to local

school districts concerning spinal screening, referral, and follow-up for appropriate diagnosis and treatment; and

(c) Encourage local school districts to work cooperatively with local health departments and local Commission for Children with Special Health Care Needs offices to plan, promote, and implement scoliosis screening programs.

(13) Referral and appropriate follow-up of any abnormality noted by a screening assessment or teacher observation shall be recorded on school health records.

(14) A school shall have emergency care procedures, which shall include:

(a) First aid facilities, including provisions for designated areas for the child to recline;

(b) A requirement that whenever children are present during school hours, there shall be at least one (1) adult present in the school [schools] who is certified in a standard first aid course which includes CPR for infants and children;

(c) A number at which parents can be reached;

(d) The name of g[the] family physician[; and

~~(e) A name of family physician].~~

(15) A local board of education shall require immunizations as required by KRS 214.034.

Section 3 Cumulative Health Records. (1) A school shall initiate a cumulative health record for each pupil entering its school.

(a) The record shall be maintained throughout the pupil's attendance.

(b) The record shall be uniform and shall be on the form "Pupil's Cumulative Health Record".

(c) The record shall include screening tests related to growth and development, vision, hearing, dental, and scoliosis, and findings and recommendations of a physician and a dentist.

(d) A follow-up by the proper health or school authorities shall be made on each abnormality noted, and the result shall be recorded.

(2) A local school authority shall report all known or suspected cases of communicable disease immediately to the local health department.

Section 4. Physical Environment. (1) A board of education shall provide and maintain a physical environment that is conducive to the health and safety of school children in each school under its jurisdiction.

(2) A local board of education shall comply with current laws and administrative regulations applicable to all public buildings pertinent to health, sanitation, and safety.

(3) A local board of education shall establish and maintain:

(a) An adequate supply of water of safe, potable, sanitary quality;

(b) A state-approved sanitary disposal of sewage, other water carried waste, and solid waste;

(c) Adequate toilet and lavatory facilities, including soap or detergent as well as towels or other methods for drying hands, and other sanitary fixtures;

(d) Adequate heating, lighting, and ventilation in all school buildings;

(e) Adequate facilities and equipment for cafeterias and lunchrooms,

(f) Supervision of general sanitation and safety of the school buildings, grounds, and playground equipment;

(g) Beginning with the 2010-2011 school year, proof that all unlicensed school personnel who have accepted delegation to perform medication administration in school have completed a training course provided [approved] by the Kentucky Department [Board] of Education. This course shall be developed in consultation with the Kentucky Board of Nursing to ensure compliance with 201 KAR 20:400.[; Adequate first aid facilities;]

(h) Adequate control of air pollutants; and

(i) Universal precautions guidelines compatible with Occupational Safety and Health Administration requirements established in 803 KAR 2:320[; and 29 C.F.R. 1910.1030.

Section 5. A superintendent shall designate a person to serve as local [school] district health coordinator.

(1) The person designated shall meet the minimum qualifications required of this position as determined by the Educational Professional Standards Board in 16 KAR 4.010 or by the Kentucky Department of Education in the Local District Classification Plan for: Class Code: 7271.

(2) Class Title: Local [School] District Health Coordinator. The local [school] district health coordinator shall work in cooperation with all school personnel, the local board of education, the State Department of Education, the local health department, family resource and youth services centers, and parents in planning, promoting, and implementing a school health services program.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference

(a) "Medical Examination of School Employees", October 2007;

(b) "Preventative Health Care Examination Form", December 1999,

(c) "Pupil's Cumulative Health Record", January 1993;

(d) "Local District Classification Plan", "Class Code: 7271, Class Title: Local District Health Coordinator", December 1999;

(e) "Kentucky Eye Examination Form for School Entry", August 2000; and

(f) "Immunization Certificate Form", EPID 230, October 2007; and

(g) "Kentucky Dental Screening/Examination For School Entry", August 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Nutrition and Health Services, Department of Education, 2545 Lawrenceburg Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

TERRY HOLIDAY, Commissioner

JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: August 10, 2009

FILED WITH LRC: August 13, 2009 at 10 a.m.

CONTACT PERSON: Kevin C. Brown, General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

**ENERGY AND ENVIRONMENT CABINET**  
Department for Natural Resources  
Office of Mine Safety and Licensing  
(As Amended at ARRS, November 10, 2009)

805 KAR 5:030. Prohibition against working or traveling under an unsupported roof; penalties.

RELATES TO: KRS ~~[351-010(1)(c)]~~ 351.020, 352.201, EO 2009-538

STATUTORY AUTHORITY. KRS [Chapter 13A.] 351.070(13); 352-201]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351. 352.201 requires each underground mine to have an approved roof control plan and directs that a person shall not ~~[no person shall]~~ proceed beyond temporary or permanent roof support. EO 2009-538, effective June 12, 2009, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet. This administrative regulation establishes procedures for the department's response in ~~[these]~~ circumstances in which a person works or travels ~~[persons work or travel]~~ under an unsupported roof.

Section 1. Definitions (1) "Mine foreman" is defined by KRS 351.010(1)(r).

(2) ~~[Definition.]~~ "Unsupported roof" means the roof in a ~~[any]~~ portion of an underground coal mine in which a ~~[no]~~ temporary or permanent roof support system has not been installed;

(a) Including ~~[and shall include]~~ ~~[any and]~~ all areas of an underground coal mine, such as ~~[including]~~ breaks, fall areas, and pillar lines; and

(b) Excluding ~~[but]~~ ~~["unsupported roof"]~~ ~~[shall not refer to]~~ a roof which has adequate natural support and has been determined to have adequate natural support either initially or following the installation of artificial roof support.

Section 2. (1) (a) A ~~[No]~~ person shall not work or travel under an unsupported roof in an ~~[any]~~ underground coal mine.

(b) [No] Mining-related activities, including equipment installation and maintenance, clean-up or activities preparatory to the installation of temporary or permanent roof support shall not be performed under an unsupported roof, and [no] justification for performing these acts ~~[any such act(s)]~~ shall not be accepted by the department.

(2)(a) A person ~~[Within sixty (60) days from the effective date of this administrative regulation, all persons]~~ working in an underground coal mine shall be instructed by [the] management of the mine office ~~[in]~~ the hazards of proceeding beyond temporary or permanent roof support.

(b) A ~~[Any]~~ person who proceeds beyond temporary or permanent roof support shall be personally liable for [any] violation of proceeding beyond temporary or permanent roof support.

(c) A mine ~~[Without regard to individual responsibility, however, each mine's]~~ foreman or section foreman shall exercise primary and ultimate responsibility to ensure that a person shall not work or travel ~~[no person(s) under the authority of that foreman works or travels]~~ under an unsupported roof.

(3)(a) If an inspector for the department does not observe ~~[Unless an inspector of the department]~~ ~~[observes]~~ a person ~~[persons]~~ working or traveling under an unsupported roof, the inspector ~~[he]~~ shall [otherwise] determine if the area below an unsupported roof appears to have been used or otherwise occupied by mining personnel.

(b) Use or occupancy shall be deemed to have occurred if there is physical evidence indicating to the inspector that a person ~~[has]~~ ~~[persons have]~~ worked or traveled under an unsupported roof.

Section 3. (1) [Whenever] ~~[If]~~ an inspector of the department observes or [otherwise] determines that mine personnel have proceeded under an unsupported roof, the inspector shall document the observation ~~[that]~~ in a report to the ~~[his]~~ district supervisor. That report shall include;

(a) The name and location of the mine at which the violation is alleged to have occurred;

(b) The time and date of the violation, if known;

(c) The person ~~[or persons]~~ observed or believed to have worked or traveled under an unsupported roof,

(d) The basis for that belief if ~~[conduct was not]~~ ~~[no conduct was]~~ actually observed;

(e) The name of the mine foreman or section foreman under whose responsibility the person was ~~[person(s) were]~~ working when ~~[at the time]~~ the conduct occurred; and

(f) The name of the instructor who administered the most recent training to the person alleged to have proceeded under an unsupported roof, the date of that training, and the location at which the training ~~[it]~~ was administered, ~~[and a recommendation of the action to be taken by the department with respect to the violation(s) alleged. The report shall be tendered to the district supervisor within two (2) working days of the date upon which the inspector observes or becomes aware of the violation alleged.]~~

(2) The report shall be tendered to the district supervisor within two (2) working days of the date upon which the inspector observes or becomes aware of the violation alleged.

(3) Upon ~~[his]~~ receipt of the report from the inspector, the district supervisor shall forward to the Executive Director of the Office of Mine Safety and Licensing, a copy of the report and a letter describing the severity of the violation and naming personnel who

are responsible for the violation [attempt to verify the matters set out in the inspector's report and in making that verification, may enter upon the premises of the underground mine at which the violation is alleged to have occurred, pursuant to KRS 351.140(8). Within five (5) working days of his receipt of the report from the inspector, the district supervisor shall tender to the commissioner a report of the alleged violation, together with a summary of the efforts undertaken by the district supervisor to verify the information set out in the inspector's report, and a recommendation to the commissioner as to any response to the violation alleged which the department should make.

(3) Within thirty (30) days of his receipt of the report and recommendation from the district supervisor, the commissioner shall determine whether the violation alleged is to be made subject to hearing. If the commissioner determines that a hearing is required to adjudicate the violation alleged, he shall cause a notice of violation to be prepared and delivered to all persons named in the district supervisor's report who appear to have responsibility, in some capacity, for that violation, which notice shall describe the violation alleged and establish a time and place for the hearing to consider it. Any person alleged to have worked or traveled under unsupported roof, or to otherwise have some responsibility for that violation, shall be given not less than thirty (30) days notice of the hearing at which he will be required to appear and respond to the allegation made.

(4) Not more than thirty (30) days following a hearing, at which the commissioner or his designee shall preside, the department shall issue findings of fact, conclusions of law and an order with respect to the matters heard at the hearing, copies of which shall be provided to the mine operator and to all parties to the hearing. If the person charged with working or traveling under unsupported roof is found guilty of that charge, he shall be required to complete an eight (8) hour course of roof control methods and safety procedures, including roof control plans and the hazards of working or traveling under unsupported roof. The course of instruction shall be developed by the department, which shall administer it in the office of the district in which the violation is found to have occurred. An employer shall not be responsible for paying the salary of any person required to complete the eight (8) hour course following a finding of that person's having worked or traveled under unsupported roof, although the eight (8) hour period required to complete the course shall be treated as an excused absence by the mine operator. A person found guilty of having worked or traveled under unsupported roof or having permitted or contributed to that violation shall not be permitted to resume employment in any underground coal mine until he has completed the eight (8) hour course of instruction, which shall be timely provided by the department to the person required to complete it.

(5) If any person fails to complete the eight (8) hour course of instruction, he shall be required to enroll for and complete another such course. At the discretion of the department, however, the Board of Minor Training, Education and Certification, established in KRS 351.105, may also be advised of his failure to complete the eight (8) hour course of instruction and may commence whatever action it deems appropriate with respect to the failure to complete the eight (8) hour course of instruction.

(6) Upon the department's determination that a person has proceeded beyond temporary or permanent roof support, the management of the mine at which he was employed at the time of the violation shall conduct, with all mine employees and in the presence of a representative of the department, a training session of not less than thirty (30) minutes duration concerning roof control methods and safety procedures, specifically including a discussion of the prohibition against working or traveling under unsupported roof.

Section 4. The following procedure shall apply to any person who has been found by the commissioner to have worked or traveled under unsupported roof and who has thereafter completed the eight (8) hour course on roof control methods and safety procedures described above, and who is alleged to have again worked or traveled under unsupported roof: the department's inspector shall make his report and recommendation to the district supervisor within two (2) working days of observing or becoming

aware of the alleged violation. The contents of that report shall be identical to those described in Section 3(1) of this administrative regulation. Upon his receipt of the inspector's report and recommendation, the district supervisor shall, within five (5) working days, make the determination and forward to the commissioner the recommendation described in Section 3(2) of this administrative regulation. Upon his receipt of the district supervisor's report and recommendation, the commissioner shall, within thirty (30) days of his receipt of it, make the determination required of him in Section 3(3) of this administrative regulation. If the commissioner determines that a person has, following his completion of the eight (8) hour course of instruction in roof control methods and safety procedures, again worked or traveled under unsupported roof, the commissioner shall immediately make a written report of that determination to the Board of Minor Training, Education and Certification. Accompanying that report shall be the commissioner's recommendation as to possible action by the board with respect to the second alleged violation, that action to potentially include the board's requiring that the person alleged to have worked or traveled under unsupported roof appear at a hearing convened by the board to show cause why he should not be decertified as an underground miner or as the holder of a certificate to practice a mining specialty in this Commonwealth, or both. Any hearing ordered by the Board of Minor Training, Education and Certification shall be conducted in accordance with KRS 351.102(11) and 352.300.]

HENRY C. LIST, Deputy Secretary

For LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 14, 2009

FILED WITH LRC: October 15, 2009 at 9 a.m.

CONTACT PERSON: Johnny Greene, Executive Director, Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0140, fax (502) 573-0152, email Johnny.Greene@ky.gov.

#### ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Office of Mine Safety and Licensing

(As Amended at ARRS, November 10, 2009)

805 KAR 7:060. Program approval.

RELATES TO: KRS 351.101, 351.102, 351.105, EO 2009-0538

STATUTORY AUTHORITY: KRS 351.070(13) [351.102], 351.106(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 352.070(13) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS Chapter 351.106(1) requires the Mining Board to establish [351.102 and 351.106 provide for the establishment of] a program of training and education of inexperienced underground and surface coal miners. EO 2009-0538, effective June 12, 2009, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet. This administrative regulation establishes the procedure for public and private entities to submit training programs to the Mining Board for approval.

Section 1. A training program for inexperienced miners shall be approved by the board if the proposed program meets the criteria and objectives of 805 KAR 7:020, and the instructors teaching the program have been certified by the Kentucky Department for Natural Resources (of Mines and Minerals) and the U.S. Department of Labor, Mine Safety and Health Administration.

Section 2. (1) A person who desires to provide a training program to inexperienced miners shall submit the proposed training program to the Mining Board, P.O. Box 2244, Frankfort, Kentucky 40602-2244, for review.

(2) The proposed training program shall contain the following information:

- (a)(1) The address and location of the training facility to be used;
- (b)(2) A description of the equipment and facilities to be used;
- (c)(3) A list of the participating instructors;
- (d)(4) The content areas in the training program for which each instructor shall be responsible;
- (e)(5) The approximate number of students per class;
- (f)(6) The dates on which the training program will be conducted;
- (g)(7) The name and address of the person responsible for the formulation and implementation of the training program;
- (h)(8) An outline of the proposed program showing how it meets the criteria and objectives of 805 KAR 7:020;
- (i)(9) A list of instructional material to be used including films or programmed material and noting where the material will be used within the instructional sequence; and
- (j)(10) A description of the instructional methods to be used throughout the program including lecture-demonstration, personalized instruction, and team-teaching

Section 3. (1) Approval granted by the board in accordance with the provisions of this administrative regulation shall be conditional upon the practical implementation of the training program in a manner consistent with the criteria and objectives of 805 KAR 7:020.

(2) The department shall have the authority to monitor an approved program without prior notice.

HENRY C. LIST, Deputy Secretary

For LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 29, 2009

FILED WITH LRC: July 29, 2009 at 1 p.m.

CONTACT PERSON: Johnny Greene, Executive Director, Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0140, fax (502) 573-0152, email Johnny.Greene@ky.gov.

#### ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Office of Mine Safety and Licensing

(As Amended at ARRS, November 10, 2009)

805 KAR 8:060. Criteria for the Imposition and enforcement of sanctions against licensed premises.

RELATES TO: KRS 351.010(1)(m), 351.025, 351.1041, 351.175, 351.194, 352.010-352.550, EO 2009-0538

STATUTORY AUTHORITY: KRS 351.025(2), 351.070(13), 351.070(15), 352.180(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Environmental and Public Protection Cabinet to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS 351.025(2) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission's imposition of penalties against licensed premises for violations of Kentucky mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) requires the Cabinet to promulgate administrative regulations providing for the manner and method of assessing penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions and mine ventilation plans that could lead to imminent danger or serious physical injury. EO 2009-0538, effective June 12, 2009, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet [KRS 352.180(4) requires the imposition of civil monetary penalties and other sanctions for failure to comply with the reporting requirements of KRS 352.180.] This administrative regulation establishes the criteria for the revocation, suspension, or probation of a mine's license, and the imposition of civil monetary penalties against a

licensed premises.

Section 1. Definitions. (1) "Commission" means the Mine Safety Review Commission.

(2) "First offense" means the first violation by a licensed premises of a mine safety law that places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including:

(a) Failure to comply with the reporting requirements set forth in KRS 352.180(1);

(b) The violation of a roof control plan, mine seal construction plans, or mine ventilation plan; or

(c) Violations pertaining to unsafe working conditions that may lead to imminent danger or serious physical injury.

(3) "Licensed facility" or "licensed premises" means "licensee", as defined by KRS 351.010(1)(o) and 352.010(1)(s), 351.010(1)(m) and 352.010(1)(r).

(4) "Mine ventilation plan" means the ventilation plan, including any revisions as approved by the United States Mine Safety and Health Administration.

(5) "Related successor" means an entity that obtains a license for a mine, if that entity is linked by common legal or equitable ownership through one (1) or more owners, to a previous licensee for that same mine or location.

(6) "Second offense" means the second violation by a licensed premises of a mine safety law that places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including:

(a) Failure to comply with the reporting requirements set forth in KRS 352.180(1);

(b) The violation of a roof control plan, mine seal construction plans, or mine ventilation plan;

(c) Violations pertaining to unsafe working conditions that may lead to imminent danger or serious physical injury.

(7) "Which could lead to imminent danger or serious physical injury."

(8) "Subsequent offense" means a violation beyond the third offense by a licensed premises of a mine safety law that places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including:

(a) Failure to comply with the reporting requirements set forth in KRS 352.180(1);

(b) The violation of a roof control plan, mine seal construction plans, mine ventilation plan;

(c) Violations pertaining to unsafe working conditions that may lead to imminent danger or serious physical injury.

(8) Failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan or mine ventilation plan which could lead to imminent danger or serious physical injury.

(7) Third offense" means the third violation by a licensed premises of a mine safety law that places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including:

(a) Failure to comply with the reporting requirements established in KRS 352.180(1);

(b) The violation of a roof control plan, mine seal construction plans, mine ventilation plan; or

(c) Violations pertaining to unsafe working conditions that may lead to imminent danger or serious physical injury.

(9) "Unsafe working conditions" means a condition that involves a hazard that:

(a) Can reasonably be expected to cause a miner serious injury or death;

(b) A foreman, superintendent or mine management was aware of or should have been aware of; and

(c) Was allowed to exist, without being corrected or addressed, [failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan or mine ventilation plan which could lead to imminent danger or serious physical in-



jury.]

Section 2. Criteria for the Imposition and Enforcement of Sanctions Against Licensed Premises for Violations of Mine Safety Laws. (1)(a) ~~If the Commission determines, pursuant to KRS 351.194, that a licensed premises has committed a first offense, if a licensed premises violates any mine safety law which places a miner in imminent danger of serious physical injury or death, which is a first offense, as adjudicated by the Kentucky Mine Safety Review Commission,~~ the commission may place the licensed premises on probation for a period of time to be determined by the commission, pursuant to KRS 351.194(5), which shall be and in proportion to the seriousness of the violations and the facts of the case.

(b) The commission may also impose a civil monetary penalty against the licensed premises ~~[not to exceed the gross value of the production of the licensed premises for up to ten (10) working days],~~ in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

(2)(a) If a licensed premises is placed on probation for a first offense violation pursuant to subsection (1) of this section, the commission may impose the terms of the probation, and it may impose penalties for the violation of the terms of probation, including the suspension or revocation of the mine's license.

(b) If the licensed premises satisfies the terms of its probation, the probation shall automatically expire at the end of the probationary period.

(3)(a) The department may file charges against a licensed premises for any alleged violation of its probationary terms.

(b) Hearings regarding the allegations shall be conducted by the Kentucky Mine Safety Review Commission, pursuant to 825 KAR 1:020.

(4)(a) ~~If the Commission determines, pursuant to KRS 351.194, that a licensed premises has committed a second offense, if a licensed premises violates any mine safety law which places a miner in imminent danger of serious physical injury or death which is a second offense, as adjudicated by the Kentucky Mine Safety Review Commission,~~ the commission may suspend or revoke the mine's license for a period of not less than two (2) calendar years, up to and including revocation, pursuant to KRS 351.194(5) and (6), and in proportion to the seriousness of the violations and the facts of the case.

(b) The commission may also impose a civil monetary penalty against the licensed premises ~~[not to exceed the gross value of the production of the licensed premises for up to ten (10) working days],~~ in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

(5)(a) If a mine license is suspended for a second offense violation pursuant to subsection (4) of this section, it shall be automatically reinstated at the end of the period of suspension.

(b) If the mine's license is revoked, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.

(c) The Office of Mine Safety and Licensing may grant or deny the application. The office shall grant the application only if the licensed premises is in full compliance with [any] orders of the Mine Safety Review Commission and KRS 351.175.

(6)(a) Upon the adjudication by the Mine Safety Review Commission of a third offense by a licensed premises ~~[for a violation of any mine safety law which places a miner in imminent danger of serious physical injury or death],~~ the commission shall revoke the mine's license for a period of not less than three (3) calendar years, up to and including a permanent revocation ~~without~~ [with-~~ne~~] possibility of reinstatement, pursuant to KRS 351.194(5) and (6) and in proportion to the seriousness of the violations and the facts of the case.

(b) If the revocation is for a period of less than a permanent revocation ~~without~~ [with-~~ne~~] possibility of reinstatement, the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.

(c) The Office of Mine Safety and Licensing may grant or deny the application. The office shall grant the application only if the licensed premises is in full compliance with [any] orders of the

Mine Safety Review Commission and KRS 351.175.

(d) If a third offense is committed by a licensed premises, the commission may also impose a civil monetary penalty against the licensed premises ~~[not to exceed the gross value of the production of the licensed premises for up to ten (10) working days],~~ in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

(7)(a) If a licensed premises commits a violation of a [any] mine safety law ~~that~~ [which] results in the death of a miner, whether the violation is first or subsequent offense, the Mine Safety Review Commission may suspend or revoke the mine's license, including permanent revocation of the license without the possibility for reinstatement, pursuant to KRS 351.194(5) and (6) and in proportion to the seriousness of the violations and the facts of the case.

(b) If the commission suspends the mine's license, it shall be automatically reinstated at the end of the period of suspension.

(c) If the commission revokes the mine's license for a period of less than a permanent revocation ~~[with-~~ne~~] possibility of reinstatement,~~ the licensed premises may apply to the Office of Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.

(d) The Office of Mine Safety and Licensing may grant or deny the application. The office shall grant the application only if the licensed premises is in full compliance with [any] Orders of the Mine Safety Review Commission and KRS 351.175.

(e) The commission may also impose a civil monetary penalty against the licensed premises ~~[not to exceed the gross value of the production of the licensed premises for up to ten (10) working days],~~ in accordance with KRS 351.025(2) and the factors established in KRS 351.194(7).

(8) If a licensed premises that has committed one (1) or more violations pursuant to subsection (1), (4), (6), or (7) of this section is subsequently sold or goes out of business, [any] penalties imposed on that licensed premises for those violations shall be imposed upon an [any] entity that is determined by the commission to be a related successor to the licensed premises in question, after a hearing conducted pursuant to KRS 351.194.

Section 3. Criteria for the Imposition and Enforcement of Civil Penalties Against Licensed Facilities for Violations of Roof Control Plans, Mine Seal Construction Plans, Unsafe Working Conditions, or Mine Ventilation Plans. (1) Amount of penalty. The commissioner or ~~the commissioner's~~ [he or her] designee shall assess monetary penalties to a licensed facility ~~that~~ [which] has been issued a noncompliance or closure order for a violation of the provisions of KRS Chapters 351 and 352 relating to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that ~~may~~ [could] lead to imminent danger or serious physical injury, or have resulted in serious physical injury or death, as follows:

(a) If the licensed facility has ~~not~~ had [ne] previous violations during the previous twenty-four (24) months relating to roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plans that ~~may~~ [could] lead to imminent danger or serious physical injury, the penalty shall ~~not~~ be [ne] more than \$2,500.[-]

(b) If the licensed facility has had one prior offense during the previous twenty-four (24) months relating to the violation of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan that resulted in the assessment of a penalty pursuant to this section, the penalty for a violation that ~~may~~ [could] lead to imminent danger or serious physical injury shall ~~not~~ be [ne] more than \$4,000.[-]

(c) If the licensed facility has had two (2) or more offenses relating to a violation during the previous twenty-four (24) months of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan that resulted in an assessment of a penalty pursuant to this section, the penalty for a violation that ~~may~~ [could] lead to imminent danger or serious physical injury shall ~~not~~ be [ne] more than \$5,000.[-]

(d) If the violation of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan results in the serious physical injury or death of a miner, the penalty shall be \$5,000, even if ~~notwithstanding whether~~ the licensed facil-



ity has been previously cited for ~~the~~[such] violation or assessed a penalty pursuant to this section; ~~and~~[-]

(e) Factors to be considered. In determining the amount of the penalty to be assessed, consideration shall be given to the following:

1. The licensed premises' cooperation with investigators;
2. The severity of the harm done, such as whether the violation resulted in:
  - a. Death;
  - b. Serious physical injury; or
  - c. The placement of an individual in imminent harm;
3. The licensed premises' acceptance of responsibility for its actions;
4. The licensed premises' history of violations;
5. The licensed premises' adjudicated violations in other states;
6. ~~Any~~ Mitigating circumstances; and
7. ~~Any~~ Aggravating circumstances.

(2) Notification. The commissioner or ~~commissioner's~~[his or her] designee shall notify a licensed facility that has been assessed a penalty pursuant to this section of the amount of the assessment.

(3) Service.

~~a~~ [a] The notice of proposed penalty assessment shall be served on the licensed facility within thirty (30) days after the proposed penalty assessment is completed.

~~b~~ [b] Failure to serve the proposed assessment within thirty (30) days shall not be grounds for dismissal of all or part of the assessment unless the licensee proves actual and substantial prejudice as a result of the delay.

~~c~~ [c] Service shall be made by one (1) or more of the following methods:

~~1.a~~ [a] The commissioner or ~~the commissioner's~~[his or her] designee may place a copy of the notice of proposed assessment in an envelope[-] and address the envelope to the licensed facility at the address provided by the licensee to the Office of Mine Safety and Licensing in its most recent license application.

~~b~~ [b] The Office of Mine Safety and Licensing shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested.

~~c~~ [c] The Office of Mine Safety and Licensing shall maintain a record of each assessment and shall include ~~therein~~ the fact of mailing and the return receipt, ~~if~~[when] received.

~~d~~ [d] If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.

~~e~~ [e] Service by certified mail shall be complete upon delivery of the envelope, upon acceptance by any person eighteen (18) years of age or older at the licensee address, upon refusal to accept by any person at the licensee address, upon the United States Postal Service's inability to deliver the assessment if properly addressed to the licensee, or upon failure to claim the assessment prior to its return to the Office of Mine Safety and Licensing by the United States Postal Service.

~~1~~ [1] The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the assessment; or

~~2~~ [b] The commissioner or ~~the commissioner's~~[his or her] designee may cause the assessment, with necessary copies, to be transferred for service to a person authorized by the Secretary who shall serve the assessment, and the return thereon shall be proof of the time and manner of service.

(4) Options of the licensed facility issued a notice of proposed assessment.

(a) Waiver.

~~1.A~~ [The] licensed facility ~~that is~~ issued a notice of proposed assessment may choose not to contest the assessment.

~~2~~ [2] Failure to file a petition pursuant to paragraph (b) of this subsection shall be considered a waiver.

~~3~~ [3] A final order shall be entered by the Mine Safety Review Commission finding that:

~~a~~ [1-] The licensed facility has waived its right to an administrative hearing on the amount of the proposed assessment;

~~b~~ [2-] The fact of the violation cited in the noncompliance or closure order is deemed admitted;

~~c~~ [3-] The proposed penalty is due and payable within thirty (30) days after the entry of the final order; and

~~d~~ [4-] The violation is a first, second, third, or subsequent offense.

(b) Petition for administrative hearing. The licensed facility may contest the proposed assessment and fact of violation by submitting a petition for administrative hearing within thirty (30) days of the receipt of the assessment in accordance with 825 KAR 1:020.

(5) ~~This~~ [Nothing contained within this] section of this administrative regulation shall be construed to impair or contravene the Office of Mine Safety and Licensing's authority to seek sanctions pursuant to Section 2 of this administrative regulation or to prevent the Mine Safety Review Commission from imposing the sanctions in Section 2 of this administrative regulation in addition to the monetary penalties assessed pursuant to this Section.

Section 4. Criteria for the Imposition and Enforcement of Sanctions Against Licensed Facilities For Failure to Comply with the Requirements for Reporting an Accident. (1) General.

~~a~~ [a] If the superintendent, mine manager, mine foreman, or a mine foreman's designee fails to comply with the reporting requirements ~~established~~[set forth] in KRS 352.180(1), the Mine Safety Review Commission may revoke, suspend or probate the mine license for a period of time to be determined by the commission, pursuant to KRS 351.194(5), and in proportion to the seriousness of the violations and the facts of the case.

~~b~~ [b] The commission shall also assess a civil monetary penalty against the licensed premises ~~in accordance with KRS 352.180(4)~~ [of not less than ten thousand dollars nor more than \$100,000 for the failure].

(2) Point system for computing the civil monetary penalty. The Mine Safety Review Commission shall apply the point system described in this subsection to evidence produced by the Office of Mine Safety and Licensing necessary to determine the amount of civil monetary penalty to assess against the licensee pursuant to this section. Points shall be assigned as follows:

(a) Appropriateness of the penalty.

~~1~~ [1] Up to fifteen (15) points shall be assigned for the size of the mine.

~~2~~ [2] The size of the mine shall be based on the tonnage produced from the mine in the previous calendar year, or in the case of a mine opened or owned less than one (1) full calendar year, the tonnage prorated to an annual basis.

~~3~~ [3] Points shall be assigned as follows:

~~a~~ [4-] 0-300,000 tons, zero (0) points;[-]

~~b~~ [2-] 300,000-500,000 tons, five (5) points;[-]

~~c~~ [3-] 500,000-1 million tons, ten (10) points;[-]

~~d~~ [4-] Over 1 million tons, fifteen (15) points;[-]

(b) History of previous violations.

~~1~~ [1] Up to twenty (20) points shall be assigned based on the history of violations at the mine, cited against the licensee during the preceding twenty-four (24) month period.

~~2~~ [2] Points shall be assigned as follows:

~~a~~ [4-] 1-5 previous violations, zero points;[-]

~~b~~ [2-] 6-10 previous violations, five (5) points;[-]

~~c~~ [3-] 11-20 previous violations, ten (10) points;[-]

~~d~~ [4-] 21-30 previous violations, fifteen (15) points;[-]

~~e~~ [5-] Over 30 previous violations, twenty (20) points;[-]

(c) Negligence.

~~1~~ [1] Up to twenty-five (25) points shall be assigned based on the degree of negligence the licensee exhibited in failing to report the accident.

~~2~~ [2] Points shall be assigned as follows:

~~a~~ [4-] No negligence. There shall ~~not~~ be [no] negligence on the part of the licensee if it exercised diligence and could not have prevented the failure to comply with the reporting requirements. Zero points shall be assigned for no negligence;

~~b~~ [2-] Negligence. There shall be negligence if the licensee has mitigating circumstances for its failure to comply with the reporting requirements. Fifteen (15) points shall be assigned for negligence; or

~~c~~ [3-] Reckless disregard. There shall be reckless disregard if the licensee exhibits the absence of the slightest degree of care in complying with the reporting requirements. Twenty-five (25) points shall be assigned for reckless disregard;[-]

(d) Gravity. Gravity shall be the severity of the accident and

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whether persons were at risk of serious physical injury or death based on the failure to comply with the reporting requirements.

1. A total of thirty (30) points shall be assigned for gravity.

2. Points shall be assigned as follows:

a.[4-] Seventy. Up to twenty (20) points shall be assigned as follows for the severity of [any] injuries:

(i)[a-] No serious physical injury occurred, zero points;

(ii)[-b-] A serious physical injury occurred, ten (10) points; or

(iii)[-c-] A fatality occurred, twenty (20) points; and

b.[2-] Persons at risk of serious physical injury or death. Up to ten (10) points shall be assigned based on whether persons were at risk of serious physical injury or death by the failure to comply with the reporting requirements, and points [Points] shall be assigned as follows:

(i) Personnel were not[a- No personnel were] at risk, zero points; or

(ii) A person was[b- Person(s) were] at risk, ten (10) points.

(3) Determination of amount of penalty. The Mine Safety Review Commission shall determine the amount of penalty by converting the total number of points assigned under subsection (2) of this section to a dollar amount, according to the schedule in the following table:

POINTS	AMOUNT
0	\$10,000
5	\$15,000
10	\$20,000
15	\$25,000
20	\$30,000
25	\$35,000
30	\$40,000
35	\$45,000
40	\$50,000
45	\$55,000
50	\$60,000
55	\$65,000
60	\$70,000
65	\$75,000
70	\$80,000
75	\$85,000
80	\$90,000
85	\$95,000
90	\$100,000

[Appendix A of this administrative regulation-](4) Waiver of use of point system to determine civil penalty.

(a)1. The Mine Safety Review Commission may waive the use of the point system contained in Section 4(2) of this administrative regulation to set the civil penalty, if it determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust.

2. The basis for every waiver shall be fully explained and documented in the record of the case.

(b)1. If the commission waives the use of the point system, it shall use the criteria established[set forth] in KRS 351.194(7) to determine the appropriate penalty.

2. If the commission has elected to waive the use of the point system, it shall give a written explanation for the basis for the assessment made in its Final Order.

Section 5. Incorporation by[ef] Reference. (1) "Notice of Proposed Assessment," July 12, 2006, OMSL Form No. NPA-1 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 30 p.m.

**[APPENDIX-A**

POINTS	AMOUNT
0	\$10,000
5	\$15,000
10	\$20,000
15	\$25,000
20	\$30,000

25	\$35,000
30	\$40,000
35	\$45,000
40	\$50,000
45	\$55,000
50	\$60,000
55	\$65,000
60	\$70,000
65	\$75,000
70	\$80,000
75	\$85,000
80	\$90,000
85	\$95,000
90	\$100,000

HENRY C. LIST, Deputy Secretary

For LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: July 29, 2009

FILED WITH LRC: July 29, 2009 at 1 p.m.

CONTACT PERSON: Johnny Greene, Executive Director, Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0140, fax (502) 573-0152, email Johnny.Greene@ky.gov.

**PUBLIC PROTECTION CABINET**

Department of Insurance

Health and Life Division

(As Amended at ARRS, November 10, 2009)

**806 KAR 12:070. Life insurance application requirements.**

RELATES TO: KRS 304.14-090, 304.14-120

STATUTORY AUTHORITY: KRS 304.2-110, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes[provides that] the Executive Director of Insurance to promulgate reasonable rules and administrative regulations[may] [make reasonable rules and regulations] necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code, as defined in KRS 304.1-010. EO 2009-535, effective June 12, 2009, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation requires that an application for life insurance which was personally solicited by an agent to include [have] the location where the application was signed and to[be] signed by the applicant[, and further requires the agent to witness this signature].

Section 1. An[Every] application for life insurance solicited personally by an agent shall include [have] the location where the application is signed and the applicant's signature[witnessed by the soliciting agent].

SHARON P. CLARK, Commissioner

ROBERT VANCE, Secretary

APPROVED BY AGENCY: August 5, 2009

FILED WITH LRC: August 13, 2009 at 10 a.m.

CONTACT PERSON: Melea Rivera, Health and Life Division, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

**PUBLIC PROTECTION CABINET**

Department of Insurance

Health and Life Division

(As Amended at ARRS, November 10, 2009)

**806 KAR 15:080. Paid-up life insurance policies.**

RELATES TO: KRS 304.15-175

STATUTORY AUTHORITY: KRS 304.2-110(1), EO 2009-535

**NECESSITY, FUNCTION, AND CONFORMITY:** EO 2009-535, effective June 12, 2009 [EO 2008-597, signed June 6, 2008, and effective June 16, 2008,] created the Department of Insurance headed by a Commissioner. KRS 304.2-110(1) authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.99-152. This administrative regulation establishes standards for the submission of a notice of a paid-up life insurance policy by an insurer to the Department of Insurance. This administrative regulation also establishes the process for requesting information regarding a paid-up life insurance policy.

**Section 1. Definitions.** (1) "Commissioner" means the commissioner of the Department of Insurance.

(2) "Department" means the Department of Insurance.

(3) "Paid-up policy" means a whole life insurance policy under which all premiums have already been paid, with no further premium payment due, including a life insurance policy where the policy is in the reduced paid-up nonforfeiture option.

(4) "Universal life insurance" means a life insurance policy in which separately identified interest credits, other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts, and mortality and expense charges are made to the policy.

(5) "Variable life insurance" means a life insurance policy under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

**Section 2. Exemptions.** This administrative regulation shall not apply to:

- (1) Annuities;
- (2) Credit life insurance;
- (3) Group life insurance;
- (4) Term life insurance;
- (5) Universal life insurance; and
- (6) Variable life insurance.

**Section 3. Timeframe for Submission of Notice.** Beginning August 30, 2008, and monthly thereafter, insurers shall provide notice to the Department, in accordance with Sections 4 and 5 of this administrative regulation, of all paid-up policies issued in Kentucky pursuant to KRS 304.15-175(1)

**Section 4. Methods of Filing.** [(4)] Notice of a paid-up policy shall be submitted by an insurer to the Department electronically through:

(a) eServices via the department's Web site, <http://insurance.ky.gov>; or

(b) A file transfer protocol, incorporating the information included in Section 5 of this administrative regulation.

(2) To utilize the option of submitting notice through a file transfer protocol, an insurer shall send a written letter to the department requesting to initiate this service].

**Section 5. Information required on the Notice.** (1) The following information regarding a paid-up policy shall be submitted to the department by an insurer:

(a) The insurer's identification number assigned by the National Association of Insurance Commissioners;

(b) The information required by KRS 304.15-175(1) [304.175(4)];

(c) The name of the insured; and

(d) The insured's date of birth.

(2) The following information regarding a paid-up policy may be submitted to the department by an insurer:

(a) The policyholder's Social Security number;

(b) The policyholder's date of birth;

(c) The name of all of the beneficiaries named; and

(d) The relationship of the beneficiary to the policyholder.

**Section 6. Request of Policy Information Requirements.** (1) A request for information on a paid-up policy shall be made by submitting a Request for Paid-Up Policy Information, PUL-1, in writing

to the Department. The request shall be made by one of the following individuals:

(a) The policyholder;

(b) The beneficiary; or

(c) An individual with legal authority to obtain insurance-related information on the insured.

(2) The written request shall include the following documentation:

(a) If the insured is deceased:

1. A certified copy of the death certificate for the insured, and

2.a. Documentation identifying the requestor as a policyholder or beneficiary under the paid-up policy; or

b. A court order permitting the requestor to obtain insurance-related information on the insured.

(b) If the insured is not deceased:

1. Documentation identifying the requestor as the policyholder, or

2. A copy of the power of attorney allowing the requestor to obtain insurance-related information regarding the insured.

**Section 7. Incorporated by Reference.** (1) "Request for Paid-Up Policy Information, PUL-1", 7/2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Department's Internet Web site at: <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner

ROBERT VANCE, Secretary

APPROVED BY AGENCY: August 10, 2009

FILED WITH LRC August 13, 2009 at 10 a.m.

CONTACT PERSON: Melea Rivera, Health and Life Division, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

## PUBLIC PROTECTION CABINET

Department of Insurance

Health and Life Division

(As Amended at ARRS, November 10, 2009)

**806 KAR 17:020. Disclosure of other coverage in application.**

RELATES TO: KRS 304.14-120

STATUTORY AUTHORITY: KRS 304.2-110, EO 2009-535

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 304.2-110 authorizes [provides that] the executive director of Insurance to promulgate [may make] reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010, EO 2009-535, effective June 12, 2009, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation requires that the applicant for health insurance disclose any and all health insurance currently in force in the name of the applicant.

**Section 1. Application Requirements.** (1) Every application form used by an insurer to solicit health insurance which is to be individually underwritten, except group or accident insurance only, shall include space requiring a listing by the applicant of all health insurance currently in force in the name of the proposed insured. The [Such] current insurance shall [need] only be identified by the name of the insurer and the amount of insurance, if known.

(2) [Section 2.] Every [such] application, described in subsection (1), solicited personally by an agent shall have the applicant's signature and the agent [witnessed by the soliciting agent, who] shall [at the same time] certify that each question on the application was asked of the [thereon was propounded by him personally to the] applicant and that the applicant's answers [thereto] have been accurately recorded [thereon].

SHARON P. CLARK, Commissioner

ROBERT VANCE, Secretary

APPROVED BY AGENCY: August 10, 2009

FILED WITH LRC: August 13, 2009 at 10 a.m.

CONTACT PERSON: Melea Rivera, Health and Life Division, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

**PUBLIC PROTECTION CABINET**

Department of Housing, Buildings and Construction

Division of Building Code Enforcement

(As Amended at ARRS, November 10, 2009)

**815 KAR 25:100. Alternative dispute resolution and mediation program.**

RELATES TO: KRS 227.550 [227.590(4)], 227.640(3)

STATUTORY AUTHORITY: KRS 227.640(3), 227.590(1)

NECESSITY FUNCTION AND CONFORMITY: KRS 227.640(3) requires the office to provide for a dispute resolution process that [which] may be used prior to a formal hearing under KRS Chapter 13B. KRS 227.590(1) requires the board to promulgate administrative regulations to effectuate the provisions of KRS 227.550 to 227.660. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than the executive director, as the head of the department. This administrative regulation establishes the requirements for dispute resolution using the process of mediation.

Section 1. Definitions. (1) "Board" is defined by KRS 227.550(1).

(2) "Certified installer" means an individual certified to install manufactured housing pursuant to 815 KAR 25:080.

(3) "Manufacturer" is defined by KRS 227.550(9).

(4) "Retailer" is defined by KRS 227.550(4).

Section 2. Establishment of the Kentucky Manufactured Housing Certification and Licensure Board Mediation Program. The [Department herein establishes, and the] board shall administer[,] the Kentucky Manufactured Housing Certification and Licensure Board Mediation Program to comply with KRS 227.640(3).

Section 3. Eligibility for Mediation. (1) A manufacturer, certified installer, or retailer of manufactured housing whose application, certification, or license is subject to disciplinary action under KRS 227.640 may request mediation prior to the convening of a formal hearing under KRS Chapter 13B.

(2) A request to mediate shall be in writing and shall be submitted to the board.

(3) Upon receipt of the request to mediate, the board shall forward the request to the Office of the Attorney General.

Section 4. Mediation Procedures. (1) Mediations shall be conducted by Office of the Attorney General mediators.

(2) Mediations shall be scheduled by the Office of the Attorney General after receipt of the written request to mediate and agreement to participate at times [a time] convenient for all participants.

(3) The scheduled mediation may be rescheduled with written approval by participating parties.

(4) If the mediator initially assigned has a documented conflict of interest, the mediator or participants shall [may] request an alternate mediator within the Office of the Attorney General.

(5) If it is determined that a conflict of interest exists between a party and the Office of the Attorney General's mediator, then a mediator shall be selected by the board from the roster maintained by the Administrative Office of the Courts.

(6) Mediation shall proceed only if all parties with full settlement authority are present. It shall be [is] the responsibility of the parties to have the necessary persons present at the mediation.

(7) Participation in the mediation shall constitute an agreement by the parties that all offers of compromise, promises, or [and] statements made in the course of the mediation shall not be offered at any subsequent hearing or trial relating to the subject matter of the dispute unless otherwise discoverable.

(8) The content of the mediation shall remain confidential as permitted by state and federal law.

(9) The mediator shall not be subject to participation or subpoena in subsequent proceedings regarding the matter mediated.

(10) Final mediation agreements shall be prepared by the mediator and signed by the parties.

Section 5. Costs of mediation. Cost of mediations conducted pursuant to this administrative regulation shall be divided equally among all parties participating in the mediation.

KRIEL MORAN, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 3, 2009

FILED WITH LRC: September 4, 2009 at noon

CONTACT PERSON: Michael D. Bennett, Staff Attorney, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394 ext 126, fax (502) 573-1057.

**PUBLIC PROTECTION CABINET**

Department of Housing, Buildings, and Construction

Division of Building Code Enforcement

(As Amended at ARRS, November 10, 2009)

**815 KAR 35:080. Code of ethics.**

RELATES TO: KRS 227A.040(8), 227A.060, EO 2009-535

STATUTORY AUTHORITY: KRS 227A.040(8), EO 2009-535

NECESSITY, FUNCTION AND CONFORMITY: KRS 227A.040(8) authorizes the Office of Housing, Buildings and Construction to promulgate administrative regulations to establish a code of ethics for electrical contractors, electricians, and master electricians. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the code of ethics for electrical contractors, master electricians and electricians.

Section 1. Code of Ethics. The Department [Office] of Housing, Buildings and Construction may find that an applicant or licensee has violated the Electrical Code of Ethics and take disciplinary action against a licensee if it finds that an applicant or licensee:

(1) Failed to have immediate personal possession of electrical license while [when] performing electrical work;

(2) Performed electrical work for which a permit is required without obtaining an electrical permit;

(3) [(2)] Knowingly performed electrical work not in compliance with the Kentucky Building Code, 815 KAR 7:120, or the Kentucky Residential Code, 815 KAR 7:125, and the electrical codes and standards incorporated by reference in those administrative regulations [thereby];

(4) [(3)] Intentionally charged a customer for work not performed or parts not provided;

(5) [(4)] Obtained electrical permits on behalf of an electrical contractor without the knowledge and permission of the electrical contractor;

(6) [(5)] Knowingly allowed a hazardous situation to remain so that the public is unduly exposed to risk of injury;

(7) [(6)] Impersonated another [any other] licensee, or allowed the use of his or her license by an unlicensed person;

(8) [(7)] Engaged in conduct intended to defraud or deceive the public;

(9) Failed to display the license number [number(s)] on all advertising disseminated, either directly or indirectly, to the general public;

~~(10) Failed to include the license number on letterhead or license number(s) on letterhead and business cards;~~

~~(11)(a) Utilized a company vehicle in the operation of an electrical business without displaying the name of the licensee or company and the licensee's Kentucky license number.~~

~~(b) [Number(s)] All identification information shall be in letters not smaller than three (3) inches in height and shall be legible at all time;~~

~~(12) Was[(9)] [Been] convicted by a court of law of a felony involving moral turpitude, fraud, or deceit;~~

~~(13) Is[(9)] [Became] a chronic or persistent alcoholic or [s] [has-been] drug-addicted so that continued performance of electrical work is dangerous to clients or the public;~~

~~(14)(49) Developed a physical or mental disability or other condition so that continued practice is dangerous to clients or to the public;~~

~~(15)(44) Had a license, certificate, registration, or other official authorization to perform electrical work denied, limited, suspended, probated, or revoked in another jurisdiction on grounds sufficient to cause an electrical license to be denied, limited, suspended, probated, or revoked in this state;~~

~~(16)(42) Attempted to use an expired, suspended, or revoked license;~~

~~(17)(43) [Presented or attempted to use as his or her own, the license of another;~~

~~(18)(44) Failed to exercise due care in the supervision of electrical work of licensed and unlicensed persons under his or her supervision; or~~

~~(18)(49)(45) Has not completed, in a timely manner, work agreed to be performed and paid for by a customer.~~

RICHARD MOLONEY, Commissioner

ROBERT D VANCE, Secretary

APPROVED BY AGENCY: July 28, 2009

FILED WITH LRC: July 30, 2009 at noon

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
Commission for Children with Special Health Care Needs  
Division of Clinical and Augmentative Services  
(As Amended at ARRS, November 10, 2009)

**911 KAR 1:085. Early Hearing Detection and Intervention Program [Newborn hearing screening equipment grant award].**

RELATES TO: KRS 194A.030(5)(7), 200.460-200.499, 211.647, 213.046(16), 216.2970

STATUTORY AUTHORITY: KRS 194A.030(5)(7), 194A.050(1), 211.647(3), 211.647(4), 216.2970(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.647 requires [authorizes] the Commission for Children with Special Health Care Needs to identify and refer for treatment infants at risk for hearing loss and establish standards for infant audiological assessment and diagnostic centers. KRS 216.2970(1) requires the Commission for Children with Special Health Care Needs to approve methods for auditory screening for all infants born in hospitals offering obstetric services and alternative birthing centers with at least forty (40) births per year. This administrative regulation establishes standards, eligibility criteria, application processes, reporting requirements, and appeal rights for entities seeking designation as approved infant audiological assessment and diagnostic centers, and identifies approved methods for auditory screening for newborn infants in hospitals and alternative birthing centers. [conduct necessary activities to identify infants at risk for hearing loss. In order to assist hospitals in complying with the provisions of KRS 216.2970, the Commission for Children with Special Health Care Needs shall provide necessary funding for the hospitals to obtain the equipment needed. This administrative regulation establishes the eligibility criteria, application process, services, reporting requirements, and appeal rights for hospitals applying to receive

funding for newborn auditory screening equipment.]

Section 1. Definitions. (1) "ASHA Guidelines" means "Guidelines for the Audiologic Assessment of Children From Birth to 5 Years of Age", published by the American Speech-Language-Hearing Association, and incorporated by reference.

(2) "Audiologist" is defined by KRS 334A.020(5).

(3) "Audiology extern" means a student engaged in the clinical experience component of an audiology doctoral degree program.

(4) "Auditory brainstem response" or "ABR" means an objective electrophysiologic measurement of the brainstem's response to the ear when stimulated with a click sound or tone burst.

(5) "Automated auditory brainstem response" or "AABR" means an automatic ABR resulting in a pass/refer outcome.

(6) "Commission" is defined by KRS 211.645(2).

(7) "JCIH Guidelines" means "Year 2007 Position Statement: Principles and Guidelines for Early Hearing Detection and Intervention Programs", published by the Joint Committee on Infant Hearing, and incorporated by reference.

(8) "Otoacoustic emissions" means an objective physiological test method for measuring responses elicited directly from the cochlea.

Section 2. Eligibility Criteria for Centers. (1) In order to be eligible for designation as a Level 1 infant audiological assessment and diagnostic center, an entity located in Kentucky shall:

(a) Employ at least one (1) audiologist who:

1. Is currently licensed pursuant to KRS Chapter 334A;

2. Has experience testing children in the age range newborn to three (3) years; and

3 a. Performs all evaluations; or

b. [4] Directly supervises audiology externs performing evaluations;

(b) Possess the capacity to complete the following tests:

1. Otoloscopic examination;

2. Tympanometry;

3. Ipsilateral acoustic reflex measurement;

4. Contralateral acoustic reflex measurement;

5. Ear-specific behavioral observation audiometry;

6. Speech awareness threshold;

7. Speech recognition or reception threshold;

8. Play audiometry; and

9. Either:

a. Otoacoustic emissions with diagnostic or screening capabilities; or

b. ABR screening with threshold information;

(c) Annually calibrate all measuring and testing equipment [in compliance with American National Standards Institute methods]; and

(d) Submit a complete application and assurance packet in accordance with Section 3 of this administrative regulation.

(2) In order to be eligible for designation as a Level 2 infant audiological assessment and diagnostic center, an entity located in Kentucky shall:

(a) Meet the requirements specified in subsection (1) of this section; and

(b) Possess the capacity to complete:

1. Otoacoustic emissions with diagnostic or screening capabilities;

2. Frequency-specific ABR;

3. Bone conduction ABR; and

4. Real ear measures.

Section 3. Application Process. (1) An entity seeking designation as an infant audiological assessment and diagnostic center shall submit to the commission a completed application packet containing:

(a) Completed and signed form CSHCN-E106, Potential Infant Audiological Assessment and Diagnostic Center Questionnaire;

(b) Copies of current professional licenses for audiologists performing evaluations;

(c) Copies of current calibration certificates for audiological testing equipment; and

(d) Copies of policies and procedures for tests and measures requested on the CSHCN-E106, Potential Infant Audiological Assessment and Diagnostic Center Questionnaire.

(2) The commission shall review an entity's application within thirty (30) days of receiving a complete packet submitted in accordance with subsection (1) of this section.

(3) Upon review of an entity's application packet, the commission's executive director or designee shall approve the entity as a Level 1 Infant Audiological Assessment and Diagnostic Center if:

(a) The entity meets the requirements specified in Section 2(1) of this administrative regulation; and

(b) The commission determines that the entity's policies and procedures conform to best practice standards as described in ASHA Guidelines and JCIH Guidelines.

(4) Upon review of an entity's application packet, the commission's executive director or designee shall approve the entity as a Level 2 Infant Audiological Assessment and Diagnostic Center if:

(a) The entity meets the requirements specified in Section 2(2) of this administrative regulation; and

(b) The commission determines that the entity's policies and procedures conform to best practice standards as described in ASHA Guidelines and JCIH Guidelines.

(5) If the commission's executive director or designee determines that the entity does not meet the requirements specified in Section 2 of this administrative regulation, the Commission shall:

(a) Advise the entity and request clarifying information; or

(b) Deny the designation as an Infant Audiological Assessment and Diagnostic Center and notify the entity of appeal rights pursuant to Section 8 of this administrative regulation.

(6) Approvals shall expire on December 31 of odd-numbered years. [prior to which] all entities seeking continued approval shall re-apply by December 1 of that year in accordance with this section.

**Section 4. Publication of Approved List.** (1) The Commission shall maintain a current listing of all approved Infant Audiological Assessment and Diagnostic Centers, with contact information.

(2) The Commission shall make the listing public through the following methods:

(a) Posting on its agency Web site;

(b) Providing to the Cabinet for Health and Family Services, Office of Administrative and Technology Services, for inclusion on the KY-CHILD electronic information system used by birthing hospitals and centers;

(c) Enclosing as an attachment to correspondence with parents; and

(d) Mailing a listing to birthing hospitals and centers upon request.

**Section 5. Removal from Approved List and Updates Required.**

(1) The commission shall remove an entity from the approved list and notify the entity of the removal if [such action when]:

(a) The entity requests removal.

(2) If the commission receives a complaint that an entity no longer meets the requirements of Section 2 of this administrative regulation, the commission shall:

(a) Advise the entity of the complaint;

(b) Request clarifying information from the entity;

(c) Review any information received; and

(d) Determine whether the entity meets the eligibility requirements of Section 2 of this administrative regulation.

(3) If the commission determines that the entity no longer meets the eligibility requirements, the commission shall:

(a) Notify the entity of appeal rights pursuant to Section 8 of this administrative regulation; and

(b) Remove the entity from the approved list.

(4) [or

(b) The commission makes a determination that the entity no longer meets the requirements of Section 2 of this administrative regulation.

(2) Following approval, an Infant Audiological Assessment and Diagnostic Center shall provide documentation via form CSHCN-E107, Infant Audiological Assessment and Diagnostic Center Program Modification, if [when] the following changes in circumstances

occur:

(a) Employment or termination of employment of an audiologist;

(b) Change in licensure status of an audiologist;

(c) Relocation of agency or addition of a location; or

(d) Modification to policy or procedure with regard to evaluations described in Section 2 of this administrative regulation.

**Section 6. Reporting Requirements.** (1) Upon completion of diagnostic testing of an infant described in KRS 211.647(5), an approved Infant Audiological Assessment and Diagnostic Center shall report to the commission:

(a) Identifying and demographic information;

(b) Results of the newborn hearing screening; [and]

(c) Results of the follow-up audiological evaluation; and

(d) Documentation of the referral required by KRS 211.647(5).

(2) An approved Infant Audiological Assessment and Diagnostic Center may submit information specified in subsection (1) of this section by one (1) of the following methods:

(a) Electronically via the KY-CHILD electronic information system; or

(b) Mailing or faxing the completed form CSHCN-E3, Audiology Update Form.

**Section 7. Resource and Informational Materials.** The commission shall make available to families of all newborns identified as having permanent hearing loss information provided by the Kentucky Commission on the Deaf and Hard of Hearing.

**Section 8. Appeal Rights.** An entity denied designation as an Infant Audiological Assessment and Diagnostic Center or which has been removed from the approved list may request an administrative hearing in accordance with KRS 13B.050.

**Section 9. Approved Methods of Auditory Screening for Newborn Infants.** (1) Auditory screenings pursuant to KRS 216.2970(1) shall include at least one (1) of the following physiological tests:

(a) ABR;

(b) AABR; or

(c) Otoacoustic emissions.

(2) Auditory screening reports shall:

(a) Document the results of physiological tests conducted;

(b) Document the presence of any risk factors pursuant to KRS 211.645(5); and

(c) Be submitted via the KY-CHILD electronic information system.

**Section 10. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) [(1)] "CSHCN-E3, Audiology Update Form", edition 2009;

(b) [(2)] "CSHCN-E106, Potential Infant Audiological Assessment and Diagnostic Center Questionnaire", edition 2009;

(c) [(3)] "CSHCN-E107, Infant Audiological Assessment and Diagnostic Center Program Modification", edition 2009;

(d) [(4)] "Guidelines for the Audiologic Assessment of Children From Birth to 5 Years of Age", American Speech-Language-Hearing Association; and

(e) [(5)] "Year 2007 Position Statement: Principles and Guidelines for Early Hearing Detection and Intervention Programs", Joint Committee on Infant Hearing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Commission for Children with Special Health Care Needs, 310 Whittington Parkway, Suite 200, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. ["Audiologist" means a person licensed by the Commonwealth to provide audiological services.

(2) "Auditory brainstem response" or "ABR" means an objective electrophysiologic measurement of the brainstem's response to the ear when stimulated with a click sound or tone burst.

(3) "Automated auditory brainstem response" or "AABR" means an automatic ABR resulting in a pass/refer outcome.

(4) "Kentucky Infants' Sound Start Hearing Screening Report" means an auditory screening report used for reporting pass or refer

and "at risk" information to CASHCN.

(5) "Commission" or "CASHCN" means the Commission for Children with Special Health Care Needs.

(6) "Discharge" means a release from a hospital to the biological parent, stepparent, adoptive parent, legal guardian, or other legal custodian of a child.

(7) "Equipment" means an ABR, ABR or OAE unit used for a newborn hearing screening in a hospital prior to discharge.

(8) "Hospital" means a hospital in Kentucky with forty (40) or more births a year.

(9) "Kentucky Infants' Sound Start" or "KISS" means a program operated by CASHCN for the purpose of tracking an infant referred from a hospital-based UNHS program through the use of information about the infant's newborn hearing screening to ensure timely, appropriate and complete services through referral, diagnostic and intervention services.

(10) "Manufacturer" means a company that produces and markets ABR, ABR or OAE equipment.

(11) "Newborn" means an infant in the hospital prior to his initial discharge.

(12) "Otoacoustic emissions" or "OAE" means an objective physiological test method for measuring responses elicited directly from the cochlea.

(13) "Physiological screening" means a testing of a newborn using ABR, ABR or OAE equipment.

(14) "Universal newborn hearing screening" or "UNHS" means a hospital-based physiologic hearing screening program that tests at least ninety (90) percent of newborns prior to discharge.

**Section 2. Hospital Eligibility Criteria.** In order to be eligible for Newborn Hearing Screening Equipment Grant Funds, a hospital located in Kentucky shall be:

(1) The location of at least forty (40) or more births annually; and

(2) A hospital lacking hearing screening equipment for initiation of a UNHS program; or

(3) A hospital in need of hearing screening equipment for expansion of an existing UNHS program.

**Section 3. Application Process.** (1) In order to be eligible for newborn hearing screening equipment grant funds, a hospital shall provide to CASHCN:

(a) A completed grant application form with supporting documentation, which shall include:

1. A narrative providing justification for the funding request;

2. Proof of completion of the May 2000 survey previously provided by the UNHS-CASHCN by inclusion of:

a. The survey; or

b. A letter from UNHS-CASHCN indicating their receipt of the survey;

(b) A manufacturer or vendor equipment price quote for the requested equipment;

(c) Proof of the hospital's accreditation by the Joint Commission on Accreditation of Healthcare Organizations;

(d) The name of the hospital UNHS contact;

(e) Letters of support, including a letter from:

1. The local or regional audiologist;

2. The hospital's chief executive officer or president;

3. The hearing screening coordinator;

4. An attending primary care provider from the respective hospital; and

5. The community's point of entry staff person with Kentucky's Early Intervention network system established pursuant to 908 KAR 2:240.

(2) A completed application with supporting documentation shall be received by September 15, 2000 at 4:30 p.m. EST at the Universal Newborn Hearing Screening Program, C/O Commission for Children with Special Health Care Needs, 982 Eastern Parkway, Louisville, Kentucky 40217. A faxed application shall not be considered.

(3) An incomplete application or one (1) not completed in accordance with provided instructions may not be considered for funding.

**Section 4. Participation Requirements.** A hospital meeting the criteria in Sections 2 and 3 of this administrative regulation shall be awarded funding if the following provisions are met:

(1) Equipment shall be purchased within thirty (30) days of receipt of funding;

(2) Hospital hearing screening personnel shall receive training within thirty (30) days of receipt of funding and annual training from that point on;

(3) Screenings shall begin within sixty (60) days of receipt of the funding;

(4) The hospital shall provide documentation that a screening shall be completed on at least ninety (90) percent of newborns in the hospital prior to their discharge;

(5) The hospital shall demonstrate its ability to:

(a) Report completed screenings by June 30 of each year; and

(b) Collaborate with UNHS-CASHCN in program development or expansion, and implementation;

(6) A hospital not attaining at least a ninety (90) percent newborn screening rate as evidenced by quarterly statistics provided to the UNHS-CASHCN database shall receive technical assistance from CASHCN in order to assist the hospital in attaining the ninety (90) percent rate; and

(7) Reporting requirements established in Section 6 shall be met.

**Section 5. Grant Award.** (1) Grants shall be ranked based on review of the application by selected CASHCN employees and the CASHCN Board of Commissioners.

(2) Award amounts shall be determined by rank order and funding available.

(3) No later than September 29, 2000:

(a) Each successful applicant shall be notified by mail; and

(b) An applicant not awarded a grant shall be notified in writing, by certified mail, return receipt requested.

(4) A contract shall be awarded in accordance with KRS Chapter 45A.

(5) Grant awards shall range from \$2,000 to \$10,000.

(6) A hospital awarded a grant shall match the grant amount on at least a dollar-for-dollar basis.

**Section 6. Reporting Requirements.** (1) A hospital shall report information to UNHS-CASHCN pursuant to KRS 211.647.

(2) Information to be reported to UNHS-CASHCN for a new birth who has failed the hearing test shall include the newborn's:

(a) Last name;

(b) First name;

(c) Middle name;

(d) Date of birth;

(e) Gender;

(f) Mother's last name;

(g) Mother's first name;

(h) Middle initial;

(i) Mother's maiden name;

(j) Mother's Social Security number;

(k) Address where the child shall be residing after discharge;

(l) Birth hospital's name;

(m) Tester's last name;

(n) Tester's first name;

(o) Tester's middle initial;

(p) Date of testing; and

(q) Test results.

(3) Information to be reported to UNHS-CASHCN for a new birth who has passed the physiological and risk factor hearing test shall not include identifying information, but shall include the:

(a) Date the test was administered;

(b) Test results;

(c) Name of the county of residence for the newborn; and

(d) Name of the hospital where the test was administered.

(4) Reporting shall be completed on a KISS Hearing Screening Report form.

(5) A hospital unable to provide a physiological screening for more than forty-eight (48) hours because of an equipment malfunction shall contact UNHS-CASHCN by phone or fax as soon as staff are aware of the delay.



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~~(6) Each equipment purchase shall be registered with UNHS-CCSHCN within thirty (30) days of purchase.~~

~~(7) A hospital shall submit to UNHS-CCSHCN, proof that the equipment is calibrated to the manufacturer's specifications.~~

~~(8) Equipment not working shall be reported immediately to the manufacturer.~~

~~Section 7. Appeal Rights. (1) If a hospital which has not received a grant wishes to appeal, within thirty (30) days of denial of the grant, the applicant shall notify CASHCN of an administrative hearing.~~

~~(2) Notice of an administrative hearing shall be provided to the hospital in accordance with KRS 13B.050.~~

~~(3) The administrative hearing process shall be conducted in accordance with KRS 13B.080 through 13B.160.~~

~~Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) Universal Newborn Hearing Screening – Hospital Survey, 2000 edition, Commission for Children with Special Health Care Needs;~~

~~(b) Universal Newborn Hearing Screening Report, 2000 edition, Commission for Children with Special Health Care Needs; and~~

~~(c) Newborn Hearing Screening Equipment Grant Application and Instructions.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

REBECCA J. CECIL, Executive Director

JANIE MILLER, Secretary

APPROVED BY AGENCY: August 11, 2009

FILED WITH LRC: August 13, 2009 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

COUNCIL ON POSTSECONDARY EDUCATION  
(Amended After Comments)

13 KAR 1:020. Private college licensing.

RELATES TO: KRS 164.020, 164.945, 164.946, [164.947,  
164.992, 165A.320]

STATUTORY AUTHORITY: KRS 164.947

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.947 requires the Council on Postsecondary Education by administrative regulation to adopt standards and procedures for the licensing of colleges as defined in KRS 164.945. The functions to be implemented by this administrative regulation are the procedure for a new college to apply for initial licensure, the procedure for site visits to colleges, the procedure for an already licensed college to apply for amendment to its current license, the standards a college shall meet in order to obtain and maintain a license, the procedure for licensed colleges to submit data to the council, the procedure for a consumer to file a complaint against a licensed college, the procedure for the council president to follow if a college is operating without a license in Kentucky, and the procedure for a college to appeal a decision by the council president. [This administrative regulation is promulgated] [Pursuant to KRS 164.945 to 164.947 and 164.992 which require that the Council on Postsecondary Education license non-public institutions] [to protect bona fide institutions and to protect citizens of the Commonwealth from fraudulent practices, unfair competition or substandard educational programs]

Section 1. Definitions. The definitions contained in 13 KAR 1:040. Definitions for independent colleges [–(1) "Accredited" means the approval of an accrediting agency.

(2) "Accrediting agency" means a national or regional agency which evaluates colleges and is recognized by the United States Department of Education, the Council on Postsecondary Accreditation, or the Council on Postsecondary Education.

(3) "Agent" means any person employed by a college to act as solicitor, broker, or independent contractor to procure students for the college by solicitation in any form made at any place other than the main campus of the college.

(4) The definition of "college" is governed by KRS 164.045.

(5) "In-state college" means a college that is chartered by, organized within, and has its principal location in Kentucky.

(6) "Out-of-state college" means a college that is chartered, organized, or has its principal location outside Kentucky.

(7) "Unearned tuition" means the excess of cumulative collections of tuition and other instructional charges over the cumulative amount of earned tuition and other instructional charges in accordance with the college's refund policy.]

Section 2. General Requirements. (1) An in-state or out-of-state college that is operating or soliciting [A college which offers courses or conducts academic programs] in Kentucky shall be licensed, but if a college is only operating or soliciting in Kentucky as defined in 13 KAR 1:010. Section 1(8)(c), (d), or (e) solely for on-ground instruction at a location outside of Kentucky in which students leave Kentucky to attend, then licensure shall not be required.

(2) An out-of-state college shall be licensed separately for each instructional site in Kentucky. An out-of-state college that is operating or soliciting using on-line instruction to Kentucky residents shall be considered to have an online campus which shall be licensed separately as an instructional site.

(3) A college awarding a certificate, diploma, associate degree, baccalaureate degree, master's degree, doctoral degree, or other degree, whether the degree is earned or honorary, shall be licensed. If a college's program is also required to be licensed or approved by another state agency as well as the Council on Postsecondary Education, the president shall attempt to coordinate the licensing function with that agency

(4) A college shall offer only those [degrees and degree] programs, courses, and degrees, including honorary degrees, specifically authorized in the license.

(5) If a college ceases offering a licensed program, course, or degree, then the college shall notify the president in writing and request that the program, course, or degree be removed from the college's license.

(6) Providing false or misleading information shall be grounds for denial of a license, or suspension or revocation of an existing license. [If a college is licensed to offer specific courses, only those courses authorized in the license shall be offered.]

Section 3. Licensure Application Procedures. The application procedures are [The following procedures shall be observed in considering applications for a license]:

(1) An application for a license shall be on the form entitled Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 if an in-state college, or Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 if an out-of-state college [in the form and manner prescribed by the president]. Colleges not licensed as of the effective date of this administrative regulation shall submit an application for a license within sixty (60) working days. [Providing false or misleading information on any application may be deemed as sufficient grounds for denying licensure.]

(2) An [Documents to accompany application. Each] application shall be accompanied by copies of the following:

(a) College charter;

(b) College catalog;

(c) College constitution and bylaws;

(d) Student enrollment application;

(e) Student contract or agreement; [and]

(f) Documentation of accreditation, licensure, or approval by appropriate agencies, and disclosure of any prior loss or denial of accreditation with dates and reason and loss or denial of licensure or approval by an agency in this state or another state with dates and reason; and

(g) Disclosure of any former names of the college with dates.

Section 4. [–(3)] Site visits. (1) Within ninety (90) working [thirty (30)] days of the receipt of a full and complete application for a license, a supplementary application, or application for annual maintenance of license or renewal of license [renewal], the president may conduct, or may have conducted, a site visit [at the location or locations where the applicant college offers, or proposes to offer, courses of instruction]. Personnel conducting the site visit shall possess the expertise appropriate to the type of college to be visited. The purpose of a site visit shall be to make an assessment of a college using the standards for licensure as set forth in Section 8 of this administrative regulation [the instructional program, library, faculty, student services, administration, financial status, facilities, and equipment and of such other factors which are of significance in determining the college's qualifications for licensure].

(2) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's compliance with this administrative regulation and KRS 164.945-164.947.

(3) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for denial of a license, or suspension or revocation of an existing license.

(4) Cost of site visits. [A college applying for a license, or license renewal, or a college to which a site visit is necessary in order to administer KRS 164.045 to 164.047, may be required to bear the cost of the site visit.] Costs connected with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and honoraria shall be [are] paid by the college. The esti-

mated cost of the site visit shall be paid by the college prior to the site visit. The [and] final settlement regarding actual expenses incurred shall be paid by the college no later than [made within] thirty (30) days following the site visit. Failure to pay these costs shall be grounds for denial of a license, or [may result in license] suspension or revocation.

**Section 5. Action on Licensure Application.** (1) [-(6) New colleges—In the case of a proposed new college, the president may issue a license if he determines that the college may reasonably be expected to meet the standards set forth in these administrative regulations;

(a) Within three (3) years if the college proposes to award a degree no higher than an associate degree. Annual reports shall be submitted to the president demonstrating the progress being made in meeting the licensure standards.

(b) Within five (5) years if the college proposes to offer a baccalaureate or higher degree. Annual reports shall be submitted to the president demonstrating the progress being made in meeting the licensure standards.

(6) Action on license applications—Within ninety (90) [thirty (30)] working days of the completion of the site visit, or within sixty (60) working days of the submission of a complete licensure [an] application where a site visit is not conducted, the president shall do one (1) of the following:

(a) Issue a license for a period of no less than one (1) year, nor more than two (2) years [nor more than five (5) years];

(b) Deny the application for a license, [or]

(c) Notify the applicant college of deficiencies which must be corrected before a license can be issued, or

(d) The president may issue a conditional license in accordance with subsection (2) of this section if a college has not met all of the standards for licensure at the time the application is filed, but the president determines the college is likely to meet the standards for licensure within a period not to exceed two (2) years.

(2) A conditional license shall not exceed a period of two (2) years and shall include the conditions a college shall meet in order for a college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) A college's failure to satisfy the conditions within the timeframe specified by the president shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to a college's written request for an extension with supporting justification.

(b) If a college satisfies all the conditions with the timeframe specified, then the president shall issue a license in accordance with sub-section (1) (a) of this section.

[(7) Failure to apply for a license.—If a college which is subject to the provisions of this administrative regulation fails to apply for a license, the president shall take the following action:

(a) Notify the college by registered mail of the requirement to obtain a license;

(b) If a license application is not received within sixty (60) days of notification, require the chief administrative officer to appear for a hearing as provided in Section 8 of this administrative regulation;

(c) If the chief administrative officer does not appear for the hearing, refer the case to the appropriate county attorney for enforcement.]

**Section 6 [4. License Renewal and] Supplementary Application Procedures.** (1) [A college shall apply for license renewal on the date specified in the license.

(2) An application for license renewal, or] A supplementary application [in such form and manner as may be prescribed by the president] shall be required from a licensed college as follows [within thirty (30) days following any of these developments]:

(a) [Scheduled expiration of the licensure period;

(b) A "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020" shall be required at least ninety (90) days prior to the effective date of a change in the name of a

college;

(b) [-(e)] A Supplementary Application for Change of Location of Principal Location of a College or Location of a licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020" shall be required at least (90) days prior to the effective date of a change in the principal location of a college or the location of a licensed instructional site in Kentucky;

(c) [-(d)] A "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020" shall be required at least (90) days prior to the effective date of a change in ownership or governance of a college;

(d) A "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020" shall be submitted by an out-of-state college at least ninety (90) days prior to the effective date of a proposed addition of a certificate, diploma, degree program, major, or other concentration or specialty. If a college has only been licensed to offer a specific course or courses and proposes to offer an additional course, as opposed to an entire program, then the college shall submit the supplementary application at least ninety (90) days prior to the date the college proposes to begin offering the new course or courses. In the case of a new program, the college shall state if the new program is at a new degree level or is a significant departure from previously licensed programs for a licensed college. A significant departure is if the new program requires numbers of new faculty, many new courses, a new library or other resources, new equipment or facilities, or a new resources base. [-(e) Proposed additions or deletions of degree programs or majors, and other concentrations and specialties];

(e) A "Supplementary Application to Operate as an In-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020" shall be submitted by an in-state college at least ninety (90) days prior to the effective date of:

1. A proposed addition of a certificate, diploma, degree program, major, or other concentration or specialty;

a. In the case of a new program, the college shall state if the new program is at a new degree level or is a significant departure from previously licensed programs for a licensed college; and

b. A significant departure is if the new program requires numbers of new faculty, many new courses, a new library or other resources, new equipment or facilities, or a new resources base; or

2. The [-(f)] establishment of an instructional site away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program;

(f) A college shall submit a "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020" at least ninety (90) days prior to the establishment of an administrative site, recruitment office, or advising center in Kentucky, or the change of location of a licensed administrative site, recruitment office, or advising center in Kentucky, where the site, office, or center is not part of a licensed instructional site or proposed instructional site for which the college is seeking licensure;

(g) A college shall submit a "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020" within thirty (30) days following action by an accrediting agency or another state licensing agency which results in:

1. A college being placed in a probationary status;

2. A college losing [for more than one (1) year, or which results in the loss of the college's] accreditation or licensure; or

3. A college being denied accreditation or licensure; or

(h) A determination by the president that other sufficient cause exists which requires a supplementary application [or an application for license renewal].

(2) If the president determines that a supplementary application is required under subsection (1) (h) of this section, then the president shall send a letter to the college stating the reason that a supplementary license application is required.

(3) The president may conduct, or may have conducted, a site visit as part of the supplementary application process in accordance with Section 4 of this administrative regulation.

(4) Failure to submit a complete and accurate supplementary

application, where required, may be sufficient cause for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 7. Action on Supplementary Applications ~~[(3) Action on license renewal and supplementary applications.]~~ Within thirty (30) working days of the submission of a ~~complete~~~~[license renewal or]~~ supplementary application where a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall do one (1) of the following:

(1) Approve the supplementary application and ~~[(a) Renew the license for a period of no less than five (5) years nor more than ten (10) years;~~

(b) amend the current license without changing the renewal date;

(2) ~~[(e)]~~ Deny the ~~[renewal or]~~ supplementary application ~~with-~~  
~~out amendment to the college's license;~~

(3) Suspend or revoke a college's license; or

(4) ~~[(4)]~~ Notify the applicant college of deficiencies which must be corrected before the supplementary application can be approved and a license can be amended~~[issued]~~.

Section 8. Standards for Licensure A college shall meet the following requirements and standards in order to be licensed:

(1) Financial requirements The college shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

(a) Financial statements including:

1. A statement of financial position of unrestricted net assets and liabilities, including foundation and trust agreements;

2. An audit report prepared by an independent certified public accountant for each corporation of the college; and

3. If available, audit reports for the past three (3) years;

(b) The name of a bank or other financial institution used by the college as a reference;

(c) A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department that the college is in good standing; and

(d) An annual operating budget for the college.

(2) Agents A college shall be responsible for the actions of its agents.

(3) Guarantee of refund of unearned tuition. A college shall guarantee the refund of any unearned tuition held by the college as follows:

(a) An in-state college shall

1. Secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education;

2. Maintain an unrestricted endowment equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. Provide a letter of credit equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(b) An out-of-state college shall secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education.

(c) A college applying for a license for the first time shall estimate the amount of unearned tuition based on projected enrollment and tuition and other instructional charges.

(d) A college shall provide a statement from an independent certified public accountant confirming that the college is in compliance with subsection (3) of this section.

(4) Notice required.

(a) If a surety bond is terminated, a college shall notify the

president and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.

(b) An in-state college using an unrestricted endowment or letter of credit to satisfy the provisions of subsection (3) of this section shall notify the president if the unrestricted endowment or letter of credit falls below the required amount, and the college shall obtain a surety bond for the required amount.

(5) Personnel requirements.

(a) The college shall furnish information regarding the administrative officers, the directors, the owners, and the faculty.

(b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.

(c) Faculty members shall possess academic, scholarly, and teaching qualifications usually required for faculty in accredited colleges that offer degrees at comparable levels.

(d) There shall be a sufficient number of full-time faculty to ensure continuity and stability of the educational program.

(e) Teaching loads of faculty members shall be consistent with recognized educational practices, and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(6) Facilities and equipment.

(a) An instructional program shall not be conducted in substandard facilities.

(b) Enrollment shall not exceed the design characteristics of the facilities.

(c) A college shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories.

(7) Library resources The library shall be appropriate to support the programs offered by the college.

(a) A college, through ownership or formal agreements, shall provide and support student and faculty access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the degree level offered by the college, and shall be sufficient to support all educational, research, and public service programs.

(b) A college that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of another institution, by providing a copy of the written agreement to the president at the time of license application, and prior to the offering of any courses.

(c) A college that is dependent on another college or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the president and to students and faculty.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.

(e) A professionally trained and competent library staff, adequate to serve the needs of the students and to support the educational program, shall be provided.

(f) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided.

(g) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

(8) Curriculum. Earned degrees awarded by a college shall be bona fide academic degrees and the courses offered in degree programs shall be of collegiate quality as determined by the president using the following criteria:

(a) A course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited colleges where the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level. Provided however, a course may be offered that is not transferable based on the uniqueness of a pro-

gram, or for another valid educational reason.

(b) A college shall require a minimum of:

1. Sixty (60) student credit hours for an associate degree;
2. 120 student credit hours for a baccalaureate degree; or
3. Thirty (30) student credit hours for a post-baccalaureate, graduate, or first professional degree.

(c) A minimum of twenty-five (25) percent of the student credit hours required for a degree shall be earned through instruction offered by the college awarding the degree. Provided, however, that the twenty-five (25) percent requirement may be met through a joint, cooperative, or consortia agreement in which the instruction is offered by a college that is a party to the agreement and that is licensed by the Council on Postsecondary Education or that is a state-supported postsecondary education institution created by KRS 164.001.

(d) A majority of the student credit hours required for a graduate degree may be met through a joint, cooperative or consortia agreement in which the instruction is offered by a college that is a party to the agreement and that is licensed by the Council on Postsecondary Education or that is a state-supported postsecondary education institution created by KRS 164.001.

(e) A college shall have a systematic program of curriculum revision in order to maintain the general standards of accredited colleges with similar programs.

(f) A college shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(9) General education.

(a) A minimum of fifteen (15) student credit hours for associate degree programs, and thirty (30) student credit hours for baccalaureate degree programs shall be earned in general education, including science-mathematics, social and behavioral sciences, and humanities. A college which offers an interdisciplinary general education program, a block-type program, or other unique general education program shall be considered to be in compliance with the general education requirement if the president determines that the program content and distribution are appropriately related to the degree and institutional purposes.

(b) A new college, and any existing college which initiates a new associate degree or baccalaureate degree program or major, or other concentration or specialty, after the effective date of this administrative regulation, shall comply fully from the outset with the general education requirements.

(10) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program for which degree credit is awarded shall include the following:

(a) Adequate supervision by the college; and

(b) Other instructional support as may be required to maintain a program of acceptable quality.

(11) Truth in advertising. A college shall observe the following standards in its advertising:

(a) Advertisements, announcements, and promotional material of any kind which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the college, its personnel, its services, or the content, accreditation status, and transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the college shall not indicate that the college is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Council on Postsecondary Education, or by any other state agency. A statement using the name of the Council on Postsecondary Education, if any, shall be in exactly the following form: " (Name of College) is licensed by the Kentucky Council on Postsecondary Education."

(12) Recruitment and enrollment procedures. A college shall furnish the following to each student prior to enrollment:

(a) The college's policies on grades, attendance, and conduct;

(b) A description of the instructional program;

(c) A detailed schedule of all charges, rentals, and deposits;

(d) The schedule of refunds of all charges, rentals, and deposits; and

(e) The student enrollment application, contract, or agreement.

(13) Student affairs.

(a) Students admitted to the college shall have completed a

state-approved secondary school program or its equivalent.

(b) A student admitted to an instructional program shall have demonstrated a readiness for such instruction in the field or specialty, and the student's preparation, aptitude, and interest shall be determined to provide reasonable assurance that the student has the potential to benefit from the instruction offered.

(c) The college shall provide academic counseling by faculty or staff to each student at the time of admission and throughout the program.

(d) The college shall make assistance and counseling available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(e) The college shall maintain sufficient records for each student to provide an understanding of his background, to record his progress through the instructional program, and for reference purposes.

(f) Administrative officers of the college shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with such laws and administrative regulations.

(g) A college shall make adequate provision for the maintenance of student records in the event the college ceases operations. The location of student records shall be approved in advance by the president.

(14) College policies.

(a) The college shall maintain records in an orderly manner and make them available for inspection by the president or his designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the college as indicated below:

1. General information.

a. Official name and address of the college, name of the chief administrative officers, members of the governing body, and names of principal owners.

b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates.

c. Names of faculty, including relevant education and experience.

d. Full disclosure of the philosophy and purpose of the college and its capacity to fulfill these objectives.

2. Administrative policies.

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education.

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal.

c. Schedules for all tuition and instructional charges, and refund schedules for such tuition and instructional charges.

d. Statement of financial aid available to students.

e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost.

3. Academic policies.

a. Policy on class attendance.

b. Description of grading system.

c. Description of the degree, diploma, certificate, and other programs, including the course requirements and the time normally required to complete each.

d. Full description of the nature and objectives of all degrees offered.

(c) Refund policy on tuition and other instructional charges. The refund policy shall meet the following minimum requirements:

1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, then not more than \$100, or not more than ten (10) percent of the tuition and other instructional charges for a term or semester, whichever is less, shall be retained by the college.

2. Tuition and other instructional charges ordinarily shall be charged by the enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an

enrollment period that had not begun when the student withdrew. However, the president may approve program tuition for specific programs at a college if a student may only enroll at the beginning of the program sequence and must remain in phase. If program tuition is approved, the college shall refund tuition and other instructional charges in accordance with its published refund policy that considers both the coursework completed prior to withdrawal and the coursework that remains.

3. If a student withdraws from the college, or if a student fails to attend classes for a period of thirty (30) days during which classes are in session, the college shall officially withdraw the student from the college and shall refund an amount reasonably related to the period for which the student is not enrolled and shall refund 100 percent of all other tuition and other fees collected by the college for subsequent enrollment or registration periods unless the student is enrolled in a program for which program tuition is charged as specified in subparagraph 2 of this paragraph.

a. After completion of fifty (50) percent of the enrollment period, the college is not required to make refunds of tuition or other fees for that period.

b. In all other cases, including illness or accident, the college shall make a settlement which is fair and reasonable.

c. Refunds shall be made within thirty (30) days after notification of withdrawal has been received by the college.

4. Notwithstanding the provisions as set forth herein, if a college is accredited by an accrediting agency which has a specific refund policy which is more favorable to the student, then such policy shall be followed.

5. An out-of-state college shall refund in accordance with the policies indicated herein unless its policy is more favorable to the student, in which case the latter shall be followed.

**Section 9. Failure to Apply For A License.** (1) If a college which is subject to this administrative regulation fails to apply for a license, the president shall notify the college by registered mail of the requirement to obtain a license.

(2) If a license application is not then received within sixty (60) days of notification by the president, the president shall require the chief administrative officer to appear for a hearing as provided in Section 14 of this administrative regulation.

(3) If the chief administrative officer does not appear for the hearing, the president may refer the case to the appropriate county attorney for enforcement.

**Section 10 [6] Annual Maintenance of a College's License and Renewal of a College's License [Reports].** (1) A college [Colleges] shall submit an "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1.020" [annual report] to the president in accordance with subsection (2) of this section, and shall contain the following information:-

(1) The annual report for in-state colleges shall contain the following:-

(a) Financial Information.

1. A statement [Statements] from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing;

2. (b) A statement prepared by an independent certified public accountant confirming that the college is in compliance with Section 8(3) of this administrative regulation; and

3. Financial statement including assets and liabilities and an audit report prepared by an independent certified public accountant within the last year;

(b) Institutional Information.

1. Name and address of college;

2. Chief executive officer's name, title, address, phone number, fax number, and email address;

3. Institutional liaison's name, title, address, phone number, fax number, and email address;

4. (c) A current list of the college's agents;

5. Copies of articles of incorporation, charter, constitution, and by-laws if there have been any changes to the documents within the last year; and

6. Copy of any articulation agreement the college has with a Kentucky licensed college or state-supported institution entered into or changed within the last year;

(c) Accreditation status.

1. If the college is accredited by an accrediting agency, then the college shall provide verification of the college's accreditation status.

2. If the college is not accredited by an accrediting agency, then the college shall indicate if, when, and from whom the college will seek accreditation;

(d) Tuition for current enrollment period per credit hour, specifying semester hour, quarter hour, or other basis, and per full-time student;

(e) A copy of the college's current catalog;

(f) For an in-state college, a list of all licensed instructional sites away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program, including the name and title of the primary contact of the off-campus site, address, phone number, and program or programs by CIP code offered at the site, or course or courses if not offering an entire degree program at the site;

(g) Program Information.

1. Changes, if any, in program requirements for each program within the last year including admission requirements, courses required, the number of credit hours required for the program or major;

2. Results of the most recent program evaluation;

3. Methods used to assess student achievement;

4. Results of the most recent assessment of student achievement; and

5. A list of programs withdrawn within the last year in which there are no longer students enrolled including program title, degree level, CIP code, and address where the program is no longer being offered;

(h) Faculty information. Vitae for each program faculty member employed within the last year;

(i) Facilities information. Verification of compliance with all applicable local, state, and federal safety and fire codes; and

(j) Library information regarding the library collection and budget, and lease, contract, or letter of agreement authorizing use of other library collection, if any.

(2)(a) A college whose license expires by July 1, 2010 shall complete and submit the "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1.020" for maintenance of its license by May 1, 2010. If that college's license is subsequently renewed, then the college shall complete the "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1.020" in accordance with paragraph (b) of this subsection thereafter.

(b) A college whose license expires after July 1, 2010 shall complete the "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1.020" by April 1 of every year beginning April 1, 2011.

(3) The president may conduct, or may have conducted, a site visit as part of the annual maintenance of a license or renewal of a license process in accordance with Section 4 of this administrative regulation.

(4) Within ninety (90) working days of the submission of a complete and accurate "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1.020" where a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall:

(a) Notify the college of any deficiencies which must be corrected before the college's license can be maintained or renewed;

(b) Deny maintenance or renewal of the college's license;

(c) Maintain the college's license without changing the college's license renewal date; or

(d) Renew the college's license to June 30 of the next year.

(5) A college's failure to submit a complete and accurate "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1.020" shall be grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt,

of the denial, suspension, or revocation of the college's license.

**Section 11. Required Data Submission.** (1) A licensed college shall submit student attendance and performance data in an electronic format. The required data fields, the format and method of submission, and the dates for submission shall be in accordance with the "Licensure Compliance Reporting Manual".

(2) The president may conduct, or may have conducted, a site visit as part of the data submission process in accordance with Section 4 of this administrative regulation.

(3) A college's failure to submit complete, timely, and accurate data may be sufficient grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license:

1. The amount of the surety bond coverage is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

2. The amount of the college's unrestricted endowment is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. The letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

4. Any combination of surety bond coverage, unrestricted endowment, and letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(c) A current list of the college's agents;

(d) The student headcount enrollment for the fall term in each licensed program submitted through the Council on Postsecondary Education data collection system; and

(e) The number of students completing each licensed program submitted through the Council on Postsecondary Education data collection system.

(2) The annual report for the Kentucky site of out-of-state colleges shall contain the following:

(a) Statements from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing.

(b) A statement prepared by an independent certified public accountant confirming that:

1. The amount of the surety bond coverage is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

2. The amount of the college's unrestricted endowment is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. The letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

4. Any combination of surety bond coverage, unrestricted endowment, and letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(c) A current list of the college's agents;

(d) The student headcount enrollment for the fall term in each licensed program submitted on forms provided by the president; and

(e) The number of students completing each licensed program submitted on forms provided by the president.]

**Section 12 [6] License Expiration.** (1) A license shall automatically expire [within sixty (60) days] following any of these developments.

(a) [(1) A license renewal application is not submitted;

(2)] An in-state college ceases operating or soliciting [operation]; or

(b) [(3)] An out-of-state college ceases operating or soliciting [operation at a Kentucky site].

(2) A college that ceases operating or soliciting shall comply with Section 8(14)(9) of this administrative regulation and KRS 164.020 (23) [Section 7. Standards for Licensure. The president may determine that an in-state college meets the standards and requirements of this section if the college has been accredited by an accrediting agency. The president shall determine that the following requirements or standards are met in considering applications for a license and for license renewal:

(1) Financial stability. The college shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

(a) A financial statement including assets and liabilities and the audit report of an independent certified public accountant for each corporation of the college;

(b) The name of a bank or other financial institution as reference; and

(c) Statements from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing.

(2) A college shall be responsible for the actions of its agents and shall guarantee the refund of any unearned tuition held by the college in one (1) of the following ways:

(a) Maintain a surety bond which shall be executed by a surety company qualified and authorized to do business in Kentucky and shall be made payable to the Council on Postsecondary Education; or

(b) Maintain an unrestricted endowment; or

(c) Provide a letter of credit.

(d) An in-state college shall provide a statement by an independent certified public accountant confirming that:

1. The amount of the surety bond coverage is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

2. The unrestricted endowment is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. The letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

4. Any combination of surety bond coverage, unrestricted endowment, and letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(e) An out-of-state college shall provide a statement by an independent certified public accountant confirming that for the Kentucky site or sites:

1. The amount of the surety bond coverage is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

2. The unrestricted endowment is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. The letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

4. Any combination of surety bond coverage, unrestricted endowment, and letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(f) A college applying for a license for the first time shall estimate the amount of unearned tuition based on projected enrollment and tuition and other instructional charges.

(g) If the surety bond is terminated, the college shall notify the president and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.

(h) If the unrestricted endowment falls below the required amount, the college shall notify the president and the college shall obtain a surety bond for the amount of coverage or a letter of credit, which in combination with the unrestricted endowment, is equal to or in excess of the largest amount of unearned tuition held by the college in the most recently completed fiscal year.

(3) Personnel requirements.



(a) The college may be required to furnish information regarding the administrative officers, the directors, the owners, and the faculty.

(b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.

(c) Faculty members shall possess academic, scholarly, and teaching qualifications usually required for faculty in accredited colleges which offer degrees at comparable levels.

(d) There shall be a sufficient number of full-time faculty to insure continuity and stability of the educational program.

(e) Teaching loads of faculty members shall be consistent with recognized educational practices, and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

#### (4) Facilities and equipment

(a) The college shall be maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law, including rules and administrative regulations adopted Pursuant thereto.

(b) Adequate and appropriate space shall be maintained for instruction in classrooms and laboratories. Enrollment shall not exceed the design characteristics of the facilities. The instructional program shall not be conducted in substandard facilities and the quality and quantity of equipment shall be adequate and appropriate for the program.

(5) Library. The library shall be appropriate to support the programs offered by the college:

(a) The collection of books, periodicals, newspapers, teaching aids, and other instructional materials and equipment shall be adequate for the needs of the educational program, shall be appropriately housed, and shall be readily accessible to the faculty and students.

(b) A program for continuous acquisition of current library materials and for the recording of all library holdings shall be clearly outlined and maintained.

(c) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.

(d) A professionally trained and competent library staff, adequate to serve the needs of the students and to support the educational program, shall be provided.

(e) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided.

(f) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

(g) A college which does not provide its own library facilities and must rely on other institutions to provide library resources shall demonstrate that permission to utilize library resources has been obtained prior to implementation of its programs. The extent of dependence on other libraries shall be clearly stated and the nature and details of the agreements or contracts with the participating libraries shall be explained and exhibited. The details of the contractual agreements with other libraries must meet the criteria outlined in the above standards.

(6) Curriculum. Earned degrees shall be bona fide academic degrees and the courses offered in degree programs shall be of collegiate quality as determined by the president using the following criteria:

(a) Courses offered in degree programs shall be consistent with those generally transferable for credit among accredited colleges in programs of corresponding degree levels, and for credit toward the baccalaureate degree if such programs are at the associate degree level; or

(b) Courses are not usually transferable because of the uniqueness of a program, or for other valid educational reasons are determined to be of collective quality.

(c) A college shall not offer a master's degree, a doctoral degree, or any other graduate-level degree, as determined by the president, unless the college is accredited.

(d) The college shall have a systematic program of curriculum

revision in order to maintain the general standards of accredited colleges with similar programs.

(e) The college shall have a program of evaluation which includes a periodic assessment of the changes in student achievement.

#### (7) General education.

(a) A reasonable percentage of the total credits comprising associate degrees and baccalaureate degrees shall be earned in general education, including science/mathematics, social and behavioral sciences, and humanities. A college which offers an interdisciplinary general education program, a block-type program, or other unique general education program shall be considered to be in compliance with the general education requirement if the president determines that the program content and distribution are appropriately related to the degree and institutional purposes.

(b) A new college, and any existing college which initiates a new associate degree or baccalaureate degree program or major, or other concentration or specialty, after the effective date of these administrative regulations, shall comply fully from the outset with the general education requirements.

(8) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program for which degree credit is awarded shall include the following:

(a) Adequate supervision by the college; and

(b) Other instructional support as may be required to maintain a program of acceptable quality.

(9) Truth in advertising. A college shall observe the following standards in its advertising:

(a) Advertisements, announcements, and promotional material of any kind which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the college, its personnel, its services, or the content, accreditation status and transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the college shall not indicate that the college is "supervised," "recommended," "endorsed," or "accredited" by the Commonwealth of Kentucky, by the Council on Postsecondary Education, or by any other state agency. An advertising statement, if any, shall be in exactly the following form: " (Name of College) is licensed by the Kentucky Council on Postsecondary Education."

(10) Recruitment and enrollment procedures. A college shall furnish the following to each student prior to enrollment:

(a) The college's policies on grades, attendance, and conduct;

(b) A description of the instructional program;

(c) A detailed schedule of all charges, rentals, and deposits;

(d) The schedule of refunds of all charges, rentals, and deposits; and

(e) The student enrollment application, contract, or agreement.

#### (11) Student affairs.

(a) Students admitted to the college shall have completed a state approved secondary school program or its equivalent.

(b) A student admitted to an instructional program shall have demonstrated a readiness for such instruction in the field or specialty, and the student's preparation, aptitude, and interest shall be determined to provide reasonable assurance that the student has the potential to benefit from the instruction offered.

(c) The college shall provide academic counseling by faculty or staff to each student at the time of admission and throughout the program.

(d) The college shall make assistance and counseling available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(e) The college shall maintain sufficient records for each student to provide an understanding of his background, to record his progress through the instructional program, and for reference purposes.

(f) Administrative officers of the college shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with such laws and administrative regulations.

(g) A college which plans to cease operation in Kentucky shall

make adequate provision for the maintenance of student records. The location of student records shall be approved in advance by the president.

(h) The college shall establish suitable policies and procedures whereby a student is assured due process.

(12) College policies.

(a) The college shall maintain records in an orderly manner and make them available for inspection by the president or his designated representative.

(b) A catalog shall be published at least every two (2) years and shall include general information, administrative policies, and academic policies of the college as indicated below:

1. General information.

a. Official name and address of the college, name of the chief administrative officers, members of the governing body, and names of principal owners.

b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates.

c. Names of faculty, including relevant education and experience.

d. Full disclosure of the philosophy and purpose of the institution and its capacity to fulfill these objectives.

2. Administrative policies.

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education.

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal.

c. Schedules for all tuition and instructional charges, and refund schedules for such tuition and instructional charges.

d. Statement of financial aid available to students.

e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost.

3. Academic policies.

a. Policy on class attendance.

b. Description of grading system.

c. Description of the degree, diploma, certificate, and other programs, including the course requirements and the time normally required to complete each.

d. Full description of the nature and objectives of all degrees offered.

(e) Refund policy on tuition and other instructional charges. The refund policy shall meet the following minimum requirements:

1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, then not more than \$100, or not more than ten (10) percent of the tuition and other instructional charges for a term or semester, whichever is less, shall be retained by the college.

2. Tuition and other instructional charges ordinarily shall be charged by the enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an enrollment period that had not begun when the student withdrew. However, the president may approve program tuition for specific programs at a college if a student may only enroll at the beginning of the program sequence and must remain in phase. If program tuition is approved, the college shall refund tuition and other instructional charges in accordance with its published refund policy.

3. If a student withdraws from the college, or if a student fails to attend classes for a period of thirty (30) days during which classes are in session, the college shall officially withdraw the student from the college and shall refund an amount reasonably related to the period for which the student is not enrolled and shall refund 100 percent of all other tuition and other fees collected by the institution for subsequent enrollment or registration periods unless the student is enrolled in a program for which program tuition is charged as specified in subparagraph 2 of this paragraph.

a. After completion of fifty (50) percent of the enrollment period, the college is not required to make refunds of tuition or other fees for that period.

b. In all other cases, including illness or accident, the college shall make a settlement which is fair and reasonable.

e. Refunds shall be made within thirty (30) days after notification of withdrawal has been received by the college.

4. Notwithstanding the provisions as set forth herein, if a college is accredited by an accrediting agency which has a specific refund policy which is more favorable to the student, then such policy shall be followed.

5. An out-of-state college shall refund in accordance with the policies indicated herein unless its policy is more favorable to the student, in which case the latter shall be followed.]

Section 13[8.] Consumer Complaint Procedure. (1) A person with a complaint or grievance involving misrepresentation against a college licensed under these administrative regulations shall make a reasonable effort to resolve the complaint or grievance directly with the college. If a mutually satisfactory solution cannot be reached, the following procedure shall be followed:

(a) A person shall submit a written complaint. (1) A written statement of the complaint shall be submitted to the president which contains evidence relevant to the complaint and documentation that a reasonable effort was made to resolve the complaint directly with the college.

(b) The president may require an institution to file a written response setting forth the relevant facts concerning the consumer complaint, including a statement on the current status of the complaint, and any resolution of the complaint.

(c) (2) The president shall review the facts as presented and may intervene to bring the matter to a satisfactory conclusion through facilitation, but such facilitation shall not include legal action on behalf of any party. (3) If the president determines that the college may no longer be in compliance with the provisions of this administrative regulation, the college may be required to document its continuing compliance with this administrative regulation in the form and manner determined by the president.]

Section 14[9.] Hearings and Appeals. (1) The president may, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing consistent with the provisions of KRS 13B.005-13B.170, in order to determine the facts if the president has determined that there is sufficient cause for a suspension or revocation of a license or placement of a college's license in a probationary status[in the case].

(2) [At such hearings,] The officer, or other officers, of the college may be accompanied at the hearing by counsel of their own choosing and at their expense.

(3) Within thirty (30) working days after a hearing is held, the president shall reach a determination and shall issue findings, in writing, to the council and to the chief executive officer of the college.

(4) If the findings warrant, the president may impose the sanctions authorized in this section.

(5) (2) Sanctions. Probation, suspension of license, or revocation of license.

(a) If it is determined, on the basis of the procedures described herein, that the public interest requires that sanctions be imposed, the president may take one (1) or more of the following steps [may be taken]:

(a) Impose one (1) of the following sanctions:

1. Place the college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected;

2. Suspend the college's license for a period not to exceed one (1) year; or

3. Revoke the college's license; or

(b) (4.) Refer the case to other officials for appropriate legal action.

(6) (b) A college which is sanctioned, whether such sanction is probation, suspension of license, or revocation of license, shall comply with the terms of such sanction.

(7) (c) Any expense incurred in site visits, and for other purposes related to the removal of such sanctions, shall be borne by the college, notwithstanding the provisions of Section 3 (4) of this administrative regulation.

(3) A college may appeal the actions of the president regarding the denial of issuance of a license or license renewal or the

imposition of sanctions according to the following procedure:

(a) A college shall notify the president of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken;

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS 13B.005-13B.170[appoint a person to serve as the appeals officer].

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal. The appeal shall be considered on the written record alone;

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation;

(e) Within fourteen (14) days, the report of the appeals officer shall be forwarded to the college and to the President[Chairman] of the Council on Postsecondary Education;

(f) The president[Council on Postsecondary Education] shall act on the appeal at its next regular or special meeting, and

(g) The president[council] shall take one (1) of the following actions:

1. Issue a license;
2. Renew the license;
3. Impose one (1) of the sanctions authorized in this section;
4. Refer the case to other officials for appropriate action.

(8) Any expense incurred for a site visit, and for other purposes related to the removal of such sanctions, shall be borne by the college.

Section 15. License Fees. (1) The president shall assess a fee in accordance with the "Kentucky Licensure Fee Schedule" that is incorporated by reference in Section 16 of this administrative regulation.

(2) The president may adjust a license fee based upon the consumer price index or other appropriate indicator.

(3) Failure to pay a fee shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(b) "Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(c) "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020", November 2009;

(d) "Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020", November 2009;

(e) "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020", November 2009;

(f) "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(g) "Supplementary Application to Operate as an In-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(h) "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020", November 2009;

(i) "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020", November 2009;

(j) "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020", November 2009;

(k) "Licensure Compliance Reporting Manual", September 8, 2009; and

(l) "Kentucky Licensure Fee Schedule", November 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL E. PATTON, Chair

APPROVED BY AGENCY: November 6, 2009

FILED WITH LRC: November 12, 2009 at 2 p.m.

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## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sarah Levy, Senior Associate

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the standards and rules related to the licensing of private postsecondary education institutions, and proprietary postsecondary education institutions that are not licensed by the Board of Proprietary Education.

(b) The necessity of this administrative regulation: KRS 164.945 through 164.947 requires the Council on Postsecondary Education to license these institutions as a protection for Kentucky citizens and to protect bona fide institutions from those who engage in fraudulent practices, unfair competition, or substandard educational programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.947 requires that the Council on Postsecondary Education, by regulation, shall adopt standards and procedures for the licensing of colleges.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets out the standards institutions must meet in order to be licensed to operate in Kentucky. It also defines the process for new license applications, for amendments to licenses, and for license renewals and maintenance.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: The process for filing a license application is better defined in the changes; a physical presence as a basic requirement is articulated, the standards for licensure are updated to closely align with the latest SACS accreditation requirements; the complaint procedures are updated and the process of appeal for an adverse licensing decision is clarified; requirements for data reporting are better established as an element of providing consumer information; and a fee structure is introduced.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been updated since 1991. Since that time, numerous changes in accreditation standards have been introduced, and the entire field of distance learning has come into being. The complexity of the licensing issues requires a more detailed review than in the past, and this in turn requires additional staff, thus a fee structure is introduced.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms exactly to the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The administrative regulation better organizes the different licensure requirements, and simplifies the reporting process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are over 50 institutions licensed by the Council on Postsecondary Education. A number of individuals and firms have expressed interest in following the administrative regulation revisions of the council. The primary impact is on institutions currently licensed by the council, and on those new institutions who will seek licenses from the council.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The improvements in the organization of the administrative regulation as well as the simplification of the information requirements in annual reporting should have a positive impact on the affected groups. The introduction of a new fee structure will be perceived by some institutions as negative, but will, in fact, have a positive im-

pact by allowing us to upgrade the services we provide and thus to be more responsive to institutional requests for licensure

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: As in our budget request, we estimate that the cost to the Council on Postsecondary Education will be about \$300,000. This includes \$274,200 for personnel costs, including staff salaries and fringes and professional services contracts with external consultants for site visits, and operating expenses of \$25,800 which includes postage, supplies, and travel. This number includes this regulation and 13 KAR 1:050.

(b) On a continuing basis: As in our budget request, we estimate once the annual fee is implemented in 2011 that revenue for the Council on Postsecondary Education will be no more than \$317,500. The estimate includes revenue from proposed fees, from state appropriations, and from colleges paying the costs of site visits. This number should be considerably less since we are now proposing the elimination of some fees originally proposed. This number is also based upon an estimate of how many new colleges will apply for licensure, which is uncertain. This number includes this regulation and 13 KAR 1:050.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees, state appropriations to the Council, and reimbursement from colleges for costs of site visits.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Yes, new fees are introduced. The CPE has not charged fees before.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. New fees are introduced for institutions seeking new licenses and an annual fee for already licensed colleges seeking maintenance and renewal of licenses.

(9) TIERING. Is tiering applied? Tiering is applied. For example, in order to ease the burden on smaller, less complex institutions, the annual fee for maintenance of license/renewal of license is based upon the enrollment at an institution. Also, the annual fee is higher for a college that has been licensed for less than five years than for a college that has been licensed for five years or more. This is to account for staff time to observe the new college in terms of stable finances and operations, and provide extra consultation for the college as it learns and complies with licensure processes such as how to amend its license to add a new program and data reporting in the first few years of the college establishing itself in the state and getting through its first cohort of students. Having a lesser a fee after five years of licensure may be an incentive for a college to take seriously its investment in and commitment to Kentucky students, and may help to assure that a college is not a fly by night operation that will leave the state and abandon students after a couple of years. Similarly, more staff time is needed to watch over a new college that may be issued a conditional license to monitor the college's progress toward satisfying the conditions of the license. Also, in order to account for more complexity and staff time involved in consulting with and reviewing new out-of-state colleges seeking initial licensure, which may have multiple levels such as local, regional, and national levels in its organizational structure, the base fee is \$5,000; whereas for a new in-state college that seeks initial licensure, the base fee is \$1,000.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? This involves the licensure of private colleges, which is done by the state government's Council on Postsecondary Education.

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This involves the licensure of private colleges, which is done by the state government's Council on Postsecondary Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 164.020 (37), 164.945, 164.946, 164.947, 164.992, 165A.320.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? As in our budget request, we estimate once the annual fee is implemented in 2011 that revenue for the Council on Postsecondary Education will be no more than \$300,000. The estimate includes revenue from proposed fees, from state appropriations, and from colleges paying the costs of site visits. This number should be considerably less since we are now proposing the elimination of some fees originally proposed. This number is also based upon an estimate of how many new colleges will apply for licensure, which is uncertain. This number includes this regulation and 13 KAR 1:050.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? As in our budget request, we estimate that revenue for the Council on Postsecondary Education will be no more than \$317,500. The estimate includes revenue from proposed fees, from state appropriations, and from colleges paying the costs of site visits. This number should be considerably less since we are now proposing the elimination of some fees originally proposed. This number is also based upon an estimate of how many new colleges will apply for licensure, which is uncertain. This number includes this regulation and 13 KAR 1:050.

(c) How much will it cost to administer this program for the first year? As in our budget request, we estimate that the cost to the Council on Postsecondary Education will be about \$300,000. This includes \$274,200 for personnel costs, including staff salaries and fringes and professional services contracts with external consultants for site visits, and operating expenses of \$25,800 which includes postage, supplies, and travel. This number includes this regulation and 13 KAR 1:050.

(d) How much will it cost to administer this program for subsequent years? As in our budget request, we estimate that the cost to the Council on Postsecondary Education will be about \$317,500 for 2011-2012, and likely to increase each subsequent year. This includes \$290,100 for personnel costs, including staff salaries and fringes and professional services contracts with external consultants for site visits, and operating expenses of \$27,400 which includes postage, supplies, and travel. This number includes this regulation and 13 KAR 1:050.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): estimate no more than \$300,000 first year, no more than \$317,500 for 2011-2012, and similar amounts for subsequent years.

Expenditures (+/-): estimate approximately \$300,000 first year, \$317,500 for 2011-2012, and similar costs for subsequent years.

Other Explanation:

#### COUNCIL ON POSTSECONDARY EDUCATION (Amended After Comments)

13 KAR 1:050. Licensed out-of-state college's eligibility for Kentucky tuition grant.

RELATES TO: KRS 164.020(37), 164.945, 164.946, 164.947, 164.992

STATUTORY AUTHORITY: KRS 164.785

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is promulgated pursuant to KRS 164.785 which requires that beginning with the 2011-2012 academic year programs or campuses of any out-of-state postsecondary education college that is licensed by the Council on Postsecondary Education to operate in Kentucky and whose institutional programs are not composed solely of sectarian instruction, but in which accreditation

by the Southern Association of Colleges and Schools is not an option, shall be reviewed and approved by the Council on Postsecondary Education based on accreditation criteria that mirrors Southern Association of Colleges and Schools accreditation criteria in order to qualify as an eligible college in which a student may enroll and receive a Kentucky tuition grant.

**Section 1. General Requirements** (1) If an out-of-state college licensed by the Council on Postsecondary Education is seeking to qualify as an eligible college in which a student may enroll and receive a Kentucky tuition grant, and if accreditation by the Southern Association of Colleges and Schools is not an option for the college, then the college shall apply with the Council on Postsecondary Education pursuant to this administrative regulation.

(2)(a) Approval by the Council on Postsecondary Education per this regulation shall be for the sole purpose of qualifying a Kentucky campus or campuses of a college as an eligible college in which a Kentucky student may enroll and receive a Kentucky tuition grant, and shall not mean that the college is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, the Council on Postsecondary Education, or any other agency.

(b) A college shall not represent its status under this regulation as seeking or being accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, the Council on Postsecondary Education, or any other agency.

(3)(a) A college seeking eligibility under this regulation shall submit the "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1.050" herein incorporated by reference for each licensed Kentucky program and instructional site to the president, and make available to the president the application and all documentation required via an electronic data portal on the college's Web site.

(b) A college that seeks to be eligible under this administrative regulation beginning with the 2011-2012 academic year shall submit a complete and accurate "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1.050" by May 30, 2010.

(c) After May 30, 2010, a college that seeks to be eligible under this administrative regulation shall submit a complete and accurate "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1.050" by May 30 of the year prior to the first academic year for which it seeks to be eligible.

(4) The college shall pay a nonrefundable fee of \$1,000 to the Council on Postsecondary Education with the submission of the application. Review of the application shall not occur until the fee is paid by the college. This fee shall be in addition to any costs associated with a site visit.

(5) The president shall review the application and documentation submitted by the applicant college.

(6) Site visits.

(a) Within ninety (90) working days of the receipt of a full and complete "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1.050" or notification of a substantive change, the president may conduct, or may have conducted, a site visit.

(b) Personnel conducting a site visit shall possess the expertise appropriate to the type of college to be visited. In selecting personnel, the president may consider the person's professional experience in higher education, experience conducting site visits at postsecondary education institutions, familiarity with current accreditation requirements of accrediting agencies including the Southern Association of Colleges and Schools, and graduate or professional degree from an accredited institution. The president may use council staff or may contract with external consultants using the state's Request for Proposal (RFP) process.

(c) The purpose of a site visit shall be to make an assessment of a licensed Kentucky campus or campuses of a college using the standards as set forth in this administrative regulation.

(d) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college approved under this regulation during reasonable business hours to

inspect the files, facilities, and equipment as well as conduct interviews to determine the college's eligibility under this administrative regulation.

(e) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for ineligibility under this administrative regulation.

(f) All costs associated with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and honoraria shall be paid by the applicant college. The estimated cost of the site visit shall be paid by the college prior to the site visit, and final settlement regarding actual expenses incurred shall be paid no later than thirty (30) days following the completion of the site visit. Failure to pay these costs shall result in ineligibility under this administrative regulation.

**Section 2. Integrity of college.** (1) The college shall operate with integrity in all matters.

(2) The Council on Postsecondary Education reviews and approves colleges, not individuals. Therefore, the college shall be responsible for any of its agents and any individual who reports to the president on behalf of a college, either by virtue of his or her office or as delegated by the chief executive officer of the college, in all matters regarding institutional integrity.

(3) Failure to respond appropriately to the president's decisions and requests or to make complete, accurate, and honest disclosure shall be grounds for the president to impose a sanction, including ineligibility under this administrative regulation.

**Section 3. Core requirements.** A college applying for approval by the Council on Postsecondary Education under this regulation shall meet the following requirements:

(1) Degree-granting authority. The college shall be licensed by the Council on Postsecondary Education in accordance with 13 KAR 1.020 prior to seeking eligibility under this regulation.

(2) Accreditation. The college shall be accredited by a regional accrediting agency.

(3) Governing board.

(a) The college shall have a governing board of at least five (5) members which shall be the legal body with specific authority over the college.

(b) The board shall be an active policy-making body for the college and shall ultimately be responsible for ensuring that the financial resources of the college are adequate to provide a sound educational program.

(c) The board shall not be controlled by a minority of board members or by organizations or interests separate from it.

(d) Both the presiding officer of the board and a majority of other voting members of the board shall be free of any contractual, employment, or personal or familial financial interest in the college.

(e) A military college authorized and operated by the federal government to award degrees shall have a public board on which both the presiding officer and a majority of the other members are neither civilian employees of the military nor active or retired military.

1. The board shall have broad and significant influence upon the college's programs and operations, play an active role in policy-making, and ensure that the financial resources of the college are used to provide a sound educational program.

2. The board shall not be controlled by a minority of board members or by organizations or interests separate from the board except as specified by the authorizing legislation.

3. Both the presiding officer of the board and a majority of other voting board members shall be free of any contractual, employment, or personal or familial financial interest in the college.

(4) Chief executive officer. The college shall have a chief executive officer whose primary responsibility is to the college and who is not the presiding officer of the board.

(5) Institutional mission. The college shall have a clearly defined, comprehensive, and published mission statement that is specific to the college and appropriate for higher education. The mission shall address teaching and learning and, where applicable, research and public service.

(6) Institutional effectiveness. The college shall engage in ongoing, integrated, and institution-wide research-based planning

and evaluation processes that:

(a) Incorporate a systematic review of institutional mission, goals, and outcomes;

(b) Result in continuing improvement in institutional quality; and

(c) Demonstrate the college is effectively accomplishing its mission.

(7) Continuous operation. The college shall be in operation and shall have students enrolled in degree programs.

(8) Program length.

(a) The college shall offer one or more degree programs based on:

1. At least sixty (60) semester credit hours or the equivalent at the associate level;

2. At least 120 semester credit hours or the equivalent at the baccalaureate level; or

3. At least 30 semester credit hours or the equivalent at the post-baccalaureate, graduate, or professional level.

(b) If a college uses a unit other than semester credit hours, then the college shall provide an explanation for the equivalency.

(c) The college shall provide a justification for all degrees that include fewer than the required number of semester credit hours or its equivalent unit.

(9) Program content. The college shall offer degree programs that embody a coherent course of study that shall be compatible with its stated mission and shall be based upon fields of study appropriate to higher education.

(10) General education.

(a) In each undergraduate degree program, the college shall require the successful completion of a general education component at the collegiate level that is a substantial component of each undergraduate degree, ensures breadth of knowledge, and is based on a coherent rationale.

(b) The component shall constitute a minimum of:

1. Fifteen (15) semester hours or the equivalent for degree completion in associate programs; or

2. Thirty (30) semester hours or the equivalent for degree completion in baccalaureate programs.

(c) These credit hours shall be drawn from and include at least one (1) course from each of the following areas: humanities and fine arts, social and behavioral sciences, and natural science and mathematics.

(d) The courses shall not narrowly focus on those skills, techniques, and procedures specific to a particular occupation or profession.

(e) If a college uses a unit other than semester credit hours, the college shall provide an explanation for the equivalency.

(f) The college shall provide a justification if it allows for fewer than the required number of semester credit hours or its equivalent unit of general education courses.

(11) Course work for degrees.

(a) The college shall provide instruction for all course work required for at least one (1) degree program at each level at which it awards degrees.

(b) If the college does not provide instruction for all course work and makes arrangements for some instruction to be provided by other accredited colleges or entities through contracts or consortia, or uses some other alternative approach to meeting this requirement, then the arrangement or alternative approach shall be approved by the president.

(c) For either subsection (10)(a) or (b) of this section, the college shall demonstrate that it controls all aspects of its educational program.

(12) Faculty.

(a) The number of full-time faculty members shall be adequate to support the mission of the college and to ensure the quality and integrity of its academic programs.

(b) Upon application for eligibility under this regulation, a college shall demonstrate that it meets the required faculty qualifications.

(13) Learning resources and services.

(a) The college, through ownership or formal agreements, shall provide and support student and faculty access and user privileges to adequate library collections and services and to other learning

and information resources consistent with the degrees offered.

(b) Collections, resources, and services shall be sufficient to support all its educational, research, and public service programs.

(14) Student support services. The college shall provide student support programs, services, and activities consistent with its mission that promote student learning and enhance the development of its students.

(15) Financial resources.

(a) The college shall have a sound financial base and demonstrated financial stability to support the mission of the college and the scope of its programs and services.

(b) The college shall provide the following financial statements:

1. An institutional audit or Standard Review Report issued in accordance with Statements on Standards for Accounting and Review Services issued by the AICPA for those colleges audited as part of a systemwide or statewide audit;

2. Written institutional management letter for the most recent fiscal year prepared by an independent certified public accountant;

3. A statement of financial position of unrestricted net assets, exclusive of plant assets and plant-related debt, which represents the change in unrestricted net assets attributable to operations for the most recent year; and

4. An annual budget that shall be preceded by sound planning, subject to sound fiscal procedures, and approved by the governing board.

(16) Physical resources. The college shall have adequate physical resources to support the mission of the college and the scope of its programs and services. ~~[(17) Quality enhancement plan. The college shall have developed an acceptable Quality Enhancement Plan (QEP) that:~~

~~(a) Includes a broad-based institutional process identifying key issues emerging from institutional assessment;~~

~~(b) Focuses on learning outcomes and the environment supporting student learning and accomplishing the mission of the college;~~

~~(c) Demonstrates institutional capability for the initiation, implementation, and completion of the QEP;~~

~~(d) Includes broad-based involvement of institutional constituencies in the development and proposed implementation of the QEP; and~~

~~(e) Identifies goals and a plan to assess their achievement.]~~

Section 4. Comprehensive Standards. A college applying for approval by the Council on Postsecondary Education under this regulation shall meet the following standards:

(1) Institutional Mission. The college's mission statement shall be current and comprehensive, shall accurately guide the college's operations, shall be periodically reviewed and updated, shall be approved by the governing board, and shall be communicated to the college's constituencies.

(2) Governance and administration.

(a) The governing board of the college shall be responsible for the selection and the periodic evaluation of the chief executive officer.

(b) Governing board control. The legal authority and operating control of the college shall be clearly defined for the following areas within the college's governance structure.

1. College's mission;

2. Fiscal stability of the college;

3. Collegial policy, including policies concerning related and affiliated corporate entities and all auxiliary services; and

4. Related foundations for athletics, research, and other areas and other corporate entities whose primary purpose is to support the college and its programs.

(c) Board conflict of interest. The board shall have a policy addressing conflict of interest for its members.

(d) External influence. The governing board shall be free from undue influence from political, religious, or other external bodies and shall protect the college from such influence.

(e) Board dismissal. The governing board shall have a policy whereby members can be dismissed only for appropriate reasons and by a fair process.

(f) Board and administration distinction. There shall be a clear and appropriate distinction, in writing and practice, between the



policy-making functions of the governing board and the responsibility of the administration and faculty to administer and implement policy.

(g) Organizational structure. The college shall have a clearly defined and published organizational structure that delineates responsibility for the administration of policies.

(h) Qualified administrative and academic officers. The college shall have qualified administrative and academic officers with the experience, competence, and capacity to lead the college.

(i) Faculty and staff appointment. The college shall define and publish policies regarding appointment and employment of faculty and staff.

(j) Administrative staff evaluations. The college shall evaluate the effectiveness of its administrators on a periodic basis.

(k) Control of intercollegiate athletics. The college's chief executive officer shall have ultimate responsibility for, and exercises appropriate administrative and fiscal control over, the college's intercollegiate athletics program.

(l) Fundraising activities. The college's chief executive officer shall control the college's fund-raising activities exclusive of institution-related foundations that are independent and separately incorporated.

(m) Institution-related foundations.

1. Any institution-related foundation not controlled by the college shall have a contractual or other formal agreement that accurately describes the relationship between the college and the foundation, and describes any liability associated with that relationship.

2. The college shall ensure that the relationship is consistent with its mission.

(n) Intellectual property rights.

1. The college's policies shall be clear concerning ownership of materials, compensation, copyright issues, and the use of revenue derived from the creation and production of all intellectual property.

2. These policies shall apply to students, faculty, and staff.

(3) Institutional effectiveness. The college shall identify expected outcomes, assess the extent to which it achieves these outcomes, and provide evidence of improvement based on analysis of the results in each of the following areas:

(a) Educational programs, to include student learning outcomes;

(b) Administrative support services;

(c) Educational support services;

(d) Research within its educational mission, if appropriate, and

(e) Community and public service within its educational mission, if appropriate.

(4) All educational programs. For all educational programs including on-campus, off-campus, and distance learning programs and course work, the college shall meet the following standards:

(a) Academic program approval. The college shall demonstrate that each educational program, including all on campus, off-campus, and distance learning programs and course work, for which academic credit is awarded is approved by the faculty and the administration.

(b) Continuing education and service programs. The college's continuing education, outreach, and service programs shall be consistent with the college's mission.

(c) Admissions policies. The college shall publish admissions policies that are consistent with its mission.

(d) Acceptance of academic credit.

1. The college shall have a defined and published policy for evaluating, awarding, and accepting credit for transfer, experiential learning, advanced placement, and professional certificates that is consistent with its mission and ensures that course work and learning outcomes are at the collegiate level and comparable to the college's own degree programs.

2. The college shall assume responsibility for the academic quality of any course work or credit recorded on the college's transcript.

(e) Academic policies.

1. The college shall publish academic policies that adhere to principles of good educational practice.

2. The college's academic policies shall be disseminated to students, faculty, and other interested parties through publications that accurately represent the programs and services of the college.

(f) Practices for awarding credit. The college shall employ sound and acceptable practices for determining the amount and level of credit awarded for courses, regardless of format or mode of delivery.

(g) Consortial relationships and contractual agreements. The college shall ensure the quality of educational programs and courses offered through consortial relationships or contractual agreements, shall ensure ongoing compliance with the comprehensive requirements, and shall evaluate the consortial relationship and agreement against the purpose of the college.

(h) Noncredit to credit. The college shall award academic credit for course work taken on a noncredit basis only when there is documentation that the noncredit course work is equivalent to a designated credit experience.

(i) Academic support services. The college shall provide appropriate academic support services.

(j) Responsibility for curriculum. The college shall place primary responsibility for the content, quality, and effectiveness of the curriculum with its faculty.

(k) Academic program coordination.

1. For each major in a degree program, the college shall assign responsibility for program coordination, as well as for curriculum development and review, to persons academically qualified in the field.

2. In those degree programs for which the college does not identify a major, this requirement shall apply to a curricular area or concentration.

(l) Technology use.

1. The college's use of technology shall enhance student learning and shall be appropriate for meeting the objectives of its programs.

2. Students shall have access to and training in the use of technology

(5) Undergraduate educational programs.

(a) College-level competencies. The college shall identify college-level general education competencies and the extent to which graduates have attained them.

(b) Institutional credits for a degree.

1. At least twenty (25) percent of the credit hours required for the degree shall be earned through instruction offered by the college awarding the degree.

2. In the case of undergraduate degree programs offered through joint, cooperative, or consortia arrangements, the student shall earn twenty (25) percent of the credits required for the degree through instruction offered by the participating colleges.

(c) Undergraduate program requirements.

1. The college shall define and publish requirements for its undergraduate programs, including its general education components.

2. These requirements shall conform to commonly accepted standards and practices for degree programs.

(d) Terminal degrees of faculty. At least twenty (25) percent of the discipline course hours in each major at the baccalaureate level shall be taught by faculty members holding the terminal degree, usually the earned doctorate, in the discipline, or the equivalent of the terminal degree.

(6) Graduate and postbaccalaureate professional educational programs.

(a) Postbaccalaureate program rigor. The college's postbaccalaureate professional degree programs, master's and doctoral degree programs, shall be progressively more advanced in academic content than its undergraduate programs.

(b) Graduate curriculum. The college shall structure its graduate curricula to include knowledge of the literature of the discipline and to ensure ongoing student engagement in research and appropriate professional practice and training experiences.

(c) Institutional credits for a degree. The majority of credits toward a graduate or a post-baccalaureate professional degree shall be earned through instruction offered by the college awarding the degree. In the case of graduate and postbaccalaureate professional degree programs offered through joint, cooperative, or consortial arrangements, the student shall earn a majority of credits through instruction offered by the participating colleges.

(d) Postbaccalaureate program requirements.



1. The college shall define and publish requirements for its graduate and postbaccalaureate professional programs.

2. These requirements shall conform to commonly accepted standards and practices for degree programs.

(7) Faculty.

(a) Faculty competence.

1. The college shall employ competent faculty members qualified to accomplish the mission and goals of the college.

2. When determining acceptable qualifications of its faculty, a college shall give primary consideration to the highest earned degree in the discipline.

3. The college shall consider competence, effectiveness, and capacity, including, as appropriate, undergraduate and graduate degrees, related work experiences in the field, professional licensure and certifications, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements that contribute to effective teaching and student learning outcomes.

4. For all cases, the college shall be responsible for justifying and documenting the qualifications of its faculty.

(b) Faculty evaluation. The college shall regularly evaluate the effectiveness of each faculty member in accord with published criteria, regardless of contractual or tenured status.

(c) Faculty development. The college shall provide ongoing professional development of faculty as teachers, scholars, and practitioners.

(d) Academic freedom. The college shall ensure adequate procedures for safeguarding and protecting academic freedom.

(e) Faculty role in governance. The college shall publish policies on the responsibility and authority of faculty in academic and governance matters.

(8) Library and other learning resources.

(a) Learning and information resources. The college shall provide facilities and learning and information resources that are appropriate to support its teaching, research, and service mission.

(b) Instruction of library use. The college shall ensure that users have access to regular and timely instruction in the use of the library and other learning and information resources.

(c) Qualified staff. The college shall provide a sufficient number of qualified staff with appropriate education or experiences in library and other learning and information resources to accomplish the mission of the college.

(9) Student affairs and services.

(a) Student rights. The college shall publish a clear and appropriate statement of student rights and responsibilities and shall disseminate the statement to the campus community.

(b) Student records. The college shall protect the security, confidentiality, and integrity of student records and maintains special security measures to protect and back up data.

(c) Qualified staff. The college shall employ qualified personnel to ensure the quality and effectiveness of its student affairs programs.

(10) Financial resources.

(a) Financial stability. The college's recent financial history shall demonstrate financial stability.

(b) Submission of financial statements.

1. The college shall provide financial profile information on an annual basis and other measures of financial health as requested by the president.

2. All information shall be presented accurately and appropriately and shall represent the total operation of the college.

(c) Financial aid audits. The college shall audit financial aid programs as required by federal and state regulations.

(d) Control of finances. The college shall exercise appropriate control over all its financial resources.

(e) Control of sponsored research and external funds. The college shall maintain financial control over externally funded and sponsored research and programs.

(11) Physical resources.

(a) Control of physical resources. The college shall exercise appropriate control over all its physical resources.

(b) Institutional environment. The college shall take reasonable steps to provide a healthy, safe, and secure environment for all members of the campus community.

(c) Physical facilities. The college shall operate and maintain physical facilities, both on and off campus, that appropriately serve the needs of the college's educational programs, support services, and other mission-related activities.

(12) Compliance with federal requirements.

(a) Student achievement. The college shall evaluate success with respect to student achievement including, as appropriate, consideration of course completion, state licensing examinations, and job placement rates.

(b) Program curriculum. The college's curriculum shall be directly related and appropriate to the purpose and goals of the college and the diplomas, certificates, or degrees awarded.

(c) Publication of policies. The college shall make available to students and the public current academic calendars, grading policies, and refund policies.

(d) Program length. Program length shall be appropriate for each of the college's educational programs.

(e) Student complaints. The college shall have adequate procedures for addressing written student complaints and shall be responsible for demonstrating that it follows those procedures when resolving student complaints.

(f) Recruitment materials. Recruitment materials and presentations shall accurately represent the college's practices and policies.

(g) Title IV program responsibilities. The college shall be in compliance with its program responsibilities under Title IV of the 1998 Higher Education Amendments.

Section 5. Action on application. Within six (6) months of the submission of an "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050" where a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall do one (1) of the following:

(1) Approve the applicant college for status as an eligible college in which a student may enroll and receive a Kentucky tuition grant;

(2) Deny the applicant college for status as an eligible college; or

(3) Notify the applicant college of deficiencies which shall be corrected before approval can be granted.

Section 6. Substantive Change. (1) Approval pursuant to this administrative regulation shall be specific to a licensed college and based on conditions existing at the time of the most recent evaluation and shall not be transferable to other colleges or entries.

(2) An approved college shall notify the president within thirty (30) days of action by an accrediting agency that results in that results in the college being placed on probationary status, a college losing accreditation, or a college being denied accreditation.

(3) The president shall be responsible for evaluating all substantive changes to assess the impact of the change on the college's compliance with this administrative regulation. The president may conduct, or may have conducted a site visit in accordance with Section 1(6) of this administrative regulation.

(4) A college's failure to follow the president's procedures for notification and approval of substantive changes shall be grounds for ineligibility under this administrative regulation.

(6) If a college is unclear as to whether a change is substantive in nature, then the college shall contact the Council on Postsecondary Education in writing for consultation.

(7) A substantive change shall include the following:

(a) Action by an accrediting agency that results in the college being placed on probationary status, a college losing accreditation, or a college being denied accreditation;

(b) Initiating distance learning;

(c) Initiating a merger or consolidation;

(d) Altering significantly the educational mission of the college;

(e) Relocating a licensed Kentucky Instructional site or principal location of the college;

(f) Changing the college's governance, ownership, control, or legal status;

(g) Changing the name of the college;

(h) Altering significantly the length of a program;

(i) Initiating degree completion programs;

(j) Adding a new instructional site or program licensed in accordance with 13 KAR 1:020;

(k) Denial, suspension, or revocation of licensure by the Council on Postsecondary Education pursuant to 13 KAR 1:020; and

(l) Closing the college, a Kentucky licensed instructional site, or a Kentucky licensed program and initiating teach out agreements.

(8) Within six (6) months of notification by the college of a substantive change where a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall do one (1) of the following:

(a) Approve the substantive change and continued approval under this administrative regulation without changing the approval period;

(b) Deny the substantive change and require that the college abandon and not proceed with the substantive change or else lose approval under this administrative regulation;

(c) Notify the college of deficiencies which must be corrected before the substantive change can be approved, and may suspend or revoke approval under this administrative regulation; or

(d) Suspend or revoke approval under this administrative regulation.

**Section 7. Hearings and Appeals.** (1) The president may, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing consistent with the provisions of KRS Chapter 13B, in order to determine the facts if the president has determined that there are sufficient grounds for ineligibility under this administrative regulation.

(2) The officer, or other officers, of the college may be accompanied at the hearing by counsel of their own choosing and at their expense

(3) Within thirty (30) working days after a hearing is held, the president shall reach a determination and shall issue findings, in writing, to the Council and to the chief executive officer of the college.

(4) A college may appeal the actions of the president regarding a college's ineligibility under this administrative regulation according to the following procedure:

(a) A college shall notify the president of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken;

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS Chapter 13B;

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal;

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation;

(e) Within fourteen (14) days, the report of the appeals officer shall be forwarded to the college and to the president of the Council on Postsecondary Education;

(f) The president shall act on the appeal at its next regular or special meeting; and

(g) Upon receipt of the report of the appeals officer, the president shall approve or not approve the college.

**Section 9. Incorporation by Reference.** (1) "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050", November 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601.

PAUL PATTON, Chair

APPROVED BY AGENCY: November 6, 2009

FILED WITH LRC: November 12, 2009 at 2 p.m.

CONTACT PERSON: Sarah Levy, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone (502) 573-1555 ext. 350, fax (502) 573-1535, email sarah.levy@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sarah Levy, Sr. Associate

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards and requirements of licensed out-of-state colleges who seek to qualify as an eligible college in which a student may enroll and receive a Kentucky tuition grant.

(b) The necessity of this administrative regulation: KRS 164.785 requires that beginning with the 2011-2012 academic year programs or campuses of any out-of-state postsecondary education college that is licensed by the Council on Postsecondary Education to operate in Kentucky and whose institutional programs are not composed solely of sectarian instruction, but in which accreditation by the Southern Association of Colleges and Schools is not an option, shall be reviewed and approved by the Council on Postsecondary Education based on accreditation criteria that mirrors Southern Association of Colleges and Schools accreditation criteria in order to qualify as an eligible college in which a student may enroll and receive a Kentucky tuition grant.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.785(7)(c) requires that the Council on Postsecondary Education shall promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the provisions of that paragraph.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets out the standards and requirements that out-of-state licensed colleges must meet in to be approved by the council to be an eligible college in which a student may enroll and receive a Kentucky tuition grant.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A - this is a new regulation.

(b) The necessity of the amendment to this administrative regulation: N/A - this is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A - this is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A - this is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 3 out-of-state colleges currently licensed by the Council on Postsecondary Education for which SACS is not an option as they are accredited by another regional accrediting agency whose students have been receiving Kentucky tuition grants.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The colleges would need to comply with the requirements and standards of this regulation in order to be an eligible college in which a student may enroll and receive a Kentucky tuition grant.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be a cost to the council anytime a college wants to seek to become an eligible college in which a student may enroll and receive a Kentucky tuition grant, to provide consultation to applicable colleges through this new process and coordinate qualified personnel to do review and site visit. As in our budget request, we estimate that the cost to the Council on Postsecondary Education will be about \$300,000 for this regulation and 13 KAR 1:020. This includes \$274,200 for personnel costs, including staff salaries and fringes and professional services contracts with external consultants for site visits, and operating expenses of \$25,800 which includes postage, supplies, and travel.

(b) On a continuing basis: There will be a cost to the Council anytime a new college seeks to become an eligible college in which a student may enroll and receive a Kentucky tuition grant. Also, there will be costs for the Council whenever a college that is approved has a substantive change. As in our budget request, we estimate that the cost to the Council on Postsecondary Education

will be about \$317,500 for 2011-2012 for this regulation and 13 KAR 1:020, and it is expected to increase in subsequent years. This includes \$290,100 for personnel costs, including staff salaries and fringes and professional services contracts with external consultants for site visits, and operating expenses of \$27,400 which includes postage, supplies, and travel.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KRS 164.785 provides that "[a]ll costs associated with the institutional reviews shall be the responsibility of the institution seeking approval by the council." There will be an application fee of \$1,000. In addition, the regulation requires the college to pay for the cost of any site visit. And state appropriations will pay for staff and operating costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Yes, a fee will be necessary to implement this administrative regulation. This is a new regulation, and an application fee of \$1,000 is included.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, this is a new regulation, and there is an application fee of \$1,000.

(9) TIERING Is tiering applied? Tiering is not appropriate under these circumstances.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? This involves the licensure of private colleges, which is done by the state government's Council on Postsecondary Education.

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This involves the licensure of private colleges, which is done by the state government's Council on Postsecondary Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.785, 164.020(37), 164.945, 164.946, 164.947.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? As in our budget request, we estimate that revenue for the Council on Postsecondary Education will be no more than \$300,000 for both this regulation and 13 KAR 1:020. The estimate includes revenue from proposed fees and from colleges paying the costs of site visits. This number should be considerably less since we are now proposing the elimination of some licensure fees originally proposed, and the decrease of some licensure fees originally proposed.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? As in our budget request, we estimate that revenue for the Council on Postsecondary Education will be no more than \$317,500 for both this regulation and 13 KAR 1:020. The estimate includes revenue from proposed fees, state appropriations, and from colleges paying the costs of site visits. This number should be considerably less since we are now proposing the elimination of some licensing fees originally proposed, and the decrease of some licensing fees originally proposed.

(c) How much will it cost to administer this program for the first year? As in our budget request, we estimate that the cost to the Council on Postsecondary Education will be about \$300,000 for this regulation and 13 KAR 1:020. This includes \$274,200 for personnel costs, including staff salaries and fringes and professional services contracts with external consultants for site visits, and operating expenses of \$25,800 which includes postage, supplies, and travel.

(d) How much will it cost to administer this program for subsequent years? As in our budget request, we estimate that the cost to

the Council on Postsecondary Education will be about \$317,500 for 2011-2012 for this regulation and 13 KAR 1:020, and it is expected to increase in subsequent years. This includes \$290,100 for personnel costs, including staff salaries and fringes and professional services contracts with external consultants for site visits, and operating expenses of \$27,400 which includes postage, supplies, and travel.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the regulation.

Revenues (+/-): estimate no more than \$300,000 first year, no more than \$317,500 for 2011-2012, and similar amounts for subsequent years.

Expenditures (+/-): estimate approximately \$300,000 first year, about \$317,500 for 2011-2012, and similar expenditures for subsequent years.

Other Explanation:

#### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amended After Comments)

#### 401 KAR 51:001. Definitions for 401 KAR Chapter 51.

RELATES TO: KRS 48.010(15)(a), 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, 50[.] Appendices A-[K], 51.100(s), 51.121, 51.165, 51.166, 51 Appendix S, 52.920, 53, 60, 60 Appendices A, B, 61, 61 Appendix B, 63 Appendices A-D, 70.2, 75, 82(53, 60, 60 Appendices A and B, 61, 61 Appendix B, 63 Appendices A-D, 75), 96, 42 U.S.C. 7401-7671q, EO 2009-538

STATUTORY AUTHORITY: KRS 224.10-100(5), EO 2009-538

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 ~~requires[authorizes] the~~(5) ~~requires the Environmental and Public Protection~~ cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. EO 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet. This administrative regulation defines the terms used in 401 KAR Chapter 51. The definitions contained in this administrative regulation are neither more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Acid rain emissions limitation" means a limitation on emissions of SO<sub>2</sub> or NO<sub>x</sub> imposed by the Acid Rain Program under 42 U.S.C. 7651 to 7651o.

(2) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined according to the following:

(a) Actual emissions as of a particular date equals the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four (24) month period, that precedes that date and is representative of normal source operation.

1. Use of a different time period is allowed if the cabinet determines that a different time period is more representative of normal source operation; and

2. Source-specific allowable emissions for the unit are equivalent to actual emissions of the unit if the cabinet has made an equivalency determination pursuant to 40 C.F.R. 51.166~~The unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period are used to calculate actual emissions]~~

(b) The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(c) For an emissions unit, that has not begun normal operations on the particular date, actual emissions equals the potential to emit of the unit on that date.

(d) This definition does not include:

1. Calculating if a significant emissions increase has occurred; or

2. Establishing a PAL under 401 KAR 51:017, Section 20[23].

(3) "Actuals PAL" or "PAL" means a plant-wide applicability limit established for a major stationary source based on the base-

line actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(4) "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Class I area. This determination.

(a)[4] Is to be made on a case-by-case basis,

(b)[2] Considers the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with the times of visitor use of the Class I area; and

(c)[3] Considers the frequency and timing of natural conditions that reduce visibility.

(5) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere

(6) "Air contaminant" is defined by [KRS] KRS 224.01-010(1).

(7) "Air pollutant" means air contaminant.

(8) "Air pollution" is defined by [KRS] KRS 224.01-010(3).

(9) "Air pollution control equipment" means a mechanism, device, or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(10) "Allocate" or "allocation" means the determination by the cabinet of the number of NOx allowances to be credited to a NOx budget unit.

(11) "Allocation period" means each three (3) year period beginning May 1, 2004.

(12) "Allowable emissions" means:

(a) The emissions rate of a stationary source that is calculated using the maximum rated capacity of the source, unless the source is subject to federally-enforceable limits that restrict the operating rate, or hours of operation, or both, and the most stringent of the following:

1. The applicable standards codified in [of] 40 C.F.R. Parts 60 and 61;

2. The applicable SIP emissions limitations, including those with a future compliance date; or

3. The emissions rates specified as a federally-enforceable permit condition, including those with a future compliance date, or

(b) For an actuals PAL, the emissions rate of a stationary source [that is] calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit, and the most stringent provision of paragraph (a) 1 to 3 of this subsection.

(13) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source; or

(b) A physical change in or change in the method of operation of an affected facility that increases the potential to emit a pollutant, to which a standard applies, emitted by the facility or that results in the emission of an air pollutant, [to which a standard applies,] not previously emitted.

(14) "Alternative method" is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both U.S. EPA and the cabinet ~~means a method of sampling and analyzing for an air pollutant that is not a reference method or equivalent method and has been demonstrated to the cabinet and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance~~

(15) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(16) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(17) "ANSI" means American National Standards Institute.

(18) "AOAC" means Association of Official Analytical Chemists

(19) "ASTM" means American Society for Testing and Materials.

(20) "Baseline actual emissions" means the rate of emissions,

in tons per year, of a regulated NSR pollutant, that.

(a) For an existing electric utility steam generating unit (EUSGU), the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding the date the owner or operator begins actual construction of the project.

1. The rate is an average that:

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period; and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph;

2. Use of a cabinet-approved time period other than the twenty-four (24) month period is allowed, if [the cabinet determines that] a different time period is more representative of normal source operation; and

3. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed with, where a different consecutive twenty-four (24) month period [is] allowed for each regulated NSR pollutant.

(b) For an existing emissions unit that is not an EUSGU, the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period beginning on or after November 15, 1990, and immediately preceding the earlier of the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the cabinet for a permit required under 401 KAR 51:017 or [401-KAR] 51:052.

1. The rate is an average that

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward.

(i) To exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period;

(ii) To exclude any emissions that would have exceeded an emission limitation with which the major stationary source is required currently to comply, if the source had been required to comply with the limitations during the consecutive twenty-four (24) month period; and

(iii) For an emission limitation that is part of a maximum achievable control technology standard proposed or promulgated under 40 C.F.R. Part 63, only if the Commonwealth of Kentucky has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with 40 C.F.R. 51.165(a)(3)(ii)(G); and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph; and

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed with, however, a different consecutive twenty-four (24) month period is allowed for each regulated NSR pollutant.

(c) For a new emissions unit, equals zero for determining the emissions increase that will result from the initial construction and operation of the new unit and thereafter, for all other purposes, equals the unit's potential to emit.

(d) For a PAL for a stationary source, is determined as follows.

1. For an existing EUSGU, in accordance with the procedures contained in paragraph (a) of this subsection;

2. For other existing emissions units, in accordance with the procedures contained in paragraph (b) of this subsection; and

3. For a new emissions unit, in accordance with the procedures contained in paragraph (c) of this subsection.

(21) "Baseline area" means an intrastate area, and every part

of that area, designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1)  $\mu\text{g}/\text{m}^3$  annual average of the pollutant for which the minor source baseline date is established.

(a) Area redesignations under 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) cannot intersect or be smaller than the area of impact of a major stationary source or major modification that:

1. Establishes a minor source baseline date, or  
2. Is subject to 401 KAR 51:017 and would be constructed in the Commonwealth of Kentucky

(b) A baseline area established originally for total suspended particulate (TSP) increments remains in effect to determine the amount of available  $\text{PM}_{10}$  increments, unless the cabinet rescinds the corresponding minor source baseline date.

(22) "Baseline concentration" means the ambient concentration level that exists in the baseline area on the date the applicable minor source baseline date is established.

(a) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and includes:

1. The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b) of this subsection; and

2. The allowable emissions of major stationary sources that commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date

(b) The following are not included in the baseline concentration and thus affect the maximum applicable allowable increase:

1. Actual emissions at a major source, that result from construction commencing after the major source baseline date; and

2. Actual emissions increases and decreases at a stationary source occurring after the minor source baseline date.

(23) "Baseline date" means major source baseline date or minor source baseline date and is established for each pollutant for which increments or other equivalent measures have been established if the area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) for the pollutant on the date of the source's complete application; and

(a) For a major stationary source, the pollutant would be emitted in significant amounts; or

(b) For a major modification, there would be a significant net emissions increase of the pollutant.

(24) "Begin actual construction" means:

(a) Initiation of physical on-site construction activities on an emissions unit that are of a permanent nature and include installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures.

(b) For a change in method of operations, those on-site activities other than the preparatory activities, that mark the initiation of the change.

(25) "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each regulated NSR pollutant that will be emitted from a proposed major stationary source or major modification that:

(a) Is determined by the cabinet on a case-by-case basis pursuant to 40 C.F.R. 51.166(b)(12) after taking into account energy, environmental, and economic impacts and other costs, to be achievable by the source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant;

(b) Does not result in emissions of a pollutant that would exceed the emissions allowed by an applicable standard codified in [eff] 40 C.F.R. Parts 60 and 61; and

(c) Is satisfied by a design, equipment, work practice, or operational standard or combination of standards approved by the cabinet, if:

1. The cabinet determines technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions stan-

dard infeasible;

2. The standard establishes the emissions reduction achievable by implementation of the design, equipment, work practice, or operation; and

3. The standard provides for compliance by means that achieve equivalent results.

(26) "BOD" means biochemical oxidant demand.

(27) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(28) "BTU" means British thermal unit.

(29) "Building, structure, facility, or installation" means all of the pollutant emitting activities that:

(a) Belong to the same industrial grouping, or have the same two (2) digit major group code, as described in the Standard Industrial Classification Manual, 1987;

(b) Are located on one (1) or more contiguous or adjacent properties;

(c) Are under the control of the same person or persons under common control; and

(d) Do not include the activities of a vessel.

(30) "C" means degree Celsius (centigrade).

(31) "Cabinet" is defined by [eff] KRS 224.01-010(9).

(32) "Cal" means calorie.

(33) "Capital expenditure" is defined in 40 C.F.R. 60.2.

(34) "cfm" means cubic feet per minute.

(35) "CH<sub>4</sub>" means methane.

(36) "Clean coal technology" means a technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

(37) "Clean coal technology demonstration project" means a commercial demonstration of clean coal technology, with a federal contribution of at least twenty (20) percent of the total cost of the project and funding appropriated as follows:

(a) Under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000; or

(b) To the U.S. EPA for a similar project.

(38) "Clean unit" means an emissions unit that:

(a) Has been issued a major NSR permit that requires compliance with BACT or LAER, is complying with the applicable BACT or LAER requirements, and qualifies as a clean unit pursuant to 401 KAR 51:017, Section 20, or 401 KAR 51:052, Section 11;

(b) Has been designated by the cabinet as a clean unit, based on the criteria in 401 KAR 51:017, Section 21(2) or 401 KAR 51:052, Section 12(2), using a SIP approved permitting process; or

(c) Has been designated as a clean unit by the U.S. EPA in accordance with 40 C.F.R. 52.21(y)(3)(i) to (iv).

(39) "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(40) "CO" means carbon monoxide

(41) "CO<sub>2</sub>" means carbon dioxide.

(42) "COD" means chemical oxidant demand.

(43) "Collateral pollutant" means an air contaminant for which the emissions rate is increased as a result of undertaking a pollution control project.

(44) "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to improve overall efficiency of electricity generation or steam production.

(45) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(46) "Commence" means that an owner or operator:

(a) Has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous pro-

gram of construction, modification, or reconstruction of an affected facility; or

(b) For construction of a major stationary source or major modification in the PSD or NSR program, has all necessary preconstruction approvals or permits, and.

1. Has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Has entered into binding agreements or contractual obligations, that cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

**(45)(47)** "Commence commercial operation" means to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date remains the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered.

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of commercial operation.

**(46)(48)** "Commence operation" means, for a NOx budget unit, to have begun a mechanical, chemical, or electronic process, including start-up of a unit's combustion chamber. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date remains the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of operation.

**(47)(49)** "Complete" means, in reference to an application for a major NSR permit, that the application contains information necessary for processing the application. Designating an application complete for permit processing does not preclude the cabinet from requesting or accepting additional information.

**(48)(50)** "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

**(49)(51)** "Compliance supplement pool" means the quantity of NOx allowances provided to Kentucky by the U.S. EPA to be:

(a) Allocated to NOx budget units that achieve early reduction; or

(b) Used to assist NOx budget sources that are unable to meet the compliance deadline as provided in 401 KAR 51:180, Section 5.

**(50)(52)** "Construction" means:

(a) Fabrication, erection, installation, or modification of an air contaminant source; or

(b) For the NSR program, any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit that would result in a change in emissions at an air contaminant source.

**(51)(53)** "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of 401 KAR 51:017 or [401-KAR] 51.052 to sample, condition[,] (if applicable), analyze, and provide a record of emissions on a continuous basis.

**(52)(54)** "Continuous emissions [emission] monitoring system for NOx" or "CEMS for NOx" means the equipment required by 40 C.F.R. 96.70 to 96.76 to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NOx emissions, expressed in tons per hour for NOx. The following systems are necessary component parts, as required by 40 C.F.R. Part 75, included in a continuous emissions [emission] monitoring system:

(a) Flow monitor;

(b) NOx pollutant concentration monitor;

(c) Diluent gas monitor (O<sub>2</sub> or CO<sub>2</sub>) if required by 40 C.F.R. 96.70 to 96.76;

(d) Continuous moisture monitor if required by 40 C.F.R. 96.70 to 96.76; and

(e) Automated data acquisition and handling system.

**(53)(55)** "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

**(54)(56)** "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations in 401 KAR Chapters 50 to 65, used to sample, to condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

**(55)(57)** "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of 401 KAR 51:017 and [401-KAR] 51.052 to:

(a) Monitor process and control device operational parameters such as control device secondary voltages and electric currents,

(b) Monitor other information such as gas flow rate and[, ] ozone or carbon dioxide concentrations, and

(c) Record average operational parameter values on a continuous basis.

**(56)(58)** "Control period" means:

(a) For the year 2004, the period beginning May 31, 2004, and ending September 30, 2004, inclusive; and

(b) For all other years, the period beginning May 1 of a year and ending September 30 of the same year, inclusive.

**(57)(59)** "Director" means Director of the Division for Air Quality of the Energy and Environment [~~Environmental and Public Protection~~] Cabinet.

**(58)(60)** "District" is defined by[is] KRS 224.01-010(11).

**(59)(61)** "dscf" means dry cubic feet at standard conditions.

**(60)(62)** "dscm" means dry cubic meter at standard conditions.

**(61)(63)** "Electric generating unit" means, for 401 KAR 51:160 to [401-KAR] 51:195, a fossil fuel-fired boiler, combustion turbine, or a combined cycle system used to generate twenty-five (25) megawatts or more of electricity, some of which is offered for sale.

**(62)(64)** "Electric utility steam generating unit" or "EUSGU" means, for the PSD and NSR programs:

(a) A steam electric generating unit [~~that is~~] constructed for the purpose of supplying for sale:

1. More than one-third (1/3) of its potential electric output capacity; and

2. More than twenty-five (25) megawatt electrical output to a utility power distribution system for sale; and

(b) Steam to a steam-electric generator that would produce electrical energy is also considered in determining the electrical energy output capacity of the affected facility.

**(63)(65)** "Emission standard" means that numerical limit that fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.

**(64)(66)** "Emissions unit" means any part of a stationary source, including an EUSGU, that emits or has [~~will have~~] the potential to emit a regulated NSR pollutant. For 401 KAR 51:017 and [401-KAR] 51:052, there are two (2) types of emissions units:

(a) A new emissions unit, which is any emissions unit that is or will be newly constructed and that has existed for less than two (2) years from the date the unit first operated; and

(b) An existing emissions unit, which is any emissions unit that does not meet the requirements in paragraph (a) of this subsection or is a replacement unit.

**(65)(67)** "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards[, ] and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source shall [~~will~~] use to achieve and demonstrate compliance with the limitations and standards, including



appropriate monitoring, recordkeeping, and reporting.

(66)(68) "Equivalent method" means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet's and the U.S. EPA's satisfaction pursuant to 40 C.F.R. 53.3 to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(67)(69) "Excess NOx emissions" means any tonnage of nitrogen oxides emitted by a NOx budget unit during a control period that exceeds the NOx budget emissions limitation for the unit.

(68)(70) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(69)(74) "Existing source" means a source that is not a new source.

(70)(72) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010

(71)(73) "°F" means degree Fahrenheit.

(72)(74) "Federal land manager" means, for any lands in the United States, the secretary of the department with authority over those lands.

(73)(75) "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:

(a) Requirements developed under 40 C.F.R. Parts 60 and 61;

(b) Requirements in the Kentucky state implementation plan (SIP) approved by the U.S. EPA; and

(c) Any permit requirements established under 40 C.F.R. 52.21 or under regulations approved under 40 C.F.R. Part 51, Subpart I, including operating permits issued under an EPA-approved program incorporated into the SIP, that expressly requires adherence to a permit issued under the program.

(74)(76) "Federally-enforceable permit" means a permit issued under 401 KAR 52.020 or [401-KAR] 52:030, as appropriate.

(75)(77) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(76)(79) "Fossil fuel" means natural gas, petroleum, coal, or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

(77)(79) "Fossil fuel fired" means, for a unit:

(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combusted comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be fossil fuel fired as of the date during the year the unit begins combusting fossil fuel.

(78)(80) "ft" means feet or foot.

(79)(84) "Fuel" means natural gas, petroleum, coal, wood, or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(80)(82) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(81)(83) "g" means gram.

(82)(84) "gal" means gallon.

(83)(85) "General fund" is defined by KRS 48.010(15)(a) [in KRS 48.010(13)(a)].

(84)(86) "Generator" means a device that produces electricity.

(85)(87) "gr" means grain.

(86)(88) "HCl" means hydrochloric acid.

(87)(89) "Heat input" means the product, in MMBTU per unit of time, of the gross calorific value of the fuel, in BTU per lb, and the fuel feed rate into a combustion device, in mass of fuel per unit of time, that:

(a) Does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources; and

(b) Is measured, recorded, and reported to the cabinet by the NOx authorized account representative in accordance with 40 C.F.R. 96.70 to 96.76.

(88)(90) "HF" means hydrogen fluoride.

(89)(94) "Hg" means mercury.

(90)(92) "High terrain" means an area having an elevation of 900 feet or more above the base of the stack of a source.

(91)(93) "hr" means hour.

(92)(94) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(93)(95) "Hydrocarbon combustion flare" means:

(a) A flare used to comply with an applicable New Source Performance Standard (NSPS) or Maximum Achievable Control Technology (MACT) standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(b) A flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 µg/dscm hydrogen sulfide.

(94)(96) "H<sub>2</sub>O" means water.

(95)(97) "H<sub>2</sub>S" means hydrogen sulfide

(96)(98) "H<sub>2</sub>SO<sub>4</sub>" means sulfuric acid.

(97)(99) "in" means inch.

(98)(100) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(99)(104) "Industrial boiler or turbine" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.

(100)(102) "Innovative control technology" means a system of air pollution control that has not been adequately demonstrated in practice, but have [will have] a substantial likelihood of achieving

(a) Greater continuous emissions reduction than any control system in current practice; or

(b) At least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(101)(103) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.

(102)(104) "J" means joule.

(103)(105) "Kg" means kilogram.

(104)(106) "l" means liter.

(105)(107) "lb" means pound.

(106)(108) "Legally enforceable" means the cabinet or the U.S. EPA has the authority to enforce a certain restriction.

(107)(109) "Long dry kiln" means a kiln that employs no preheating of the feed and has a dry inlet feed.

(108)(110) "Long wet kiln" means a kiln that employs no preheating of the feed and the inlet feed to the kiln is a slurry.

(109)(114) "Low terrain" means an area other than high terrain.

(110)(112) "Lowest achievable emissions rate" or "LAER" means, for any source, the more stringent rate of emissions based on:

(a) The most stringent emissions limitation that is contained in the Kentucky SIP for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable; or

(b) The most stringent emissions limitation that is achieved in practice by the class or category of stationary sources

1. If this limitation is applied to a modification, this is the lowest achievable emissions rate for the new or modified emissions units at the stationary source.

2. The application of this term does not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance

(111)(114) "m" means meter.

(112)(114) "m<sup>3</sup>" means cubic meter.

(113)(115) "Major emissions unit" means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of a PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act, 42 U.S.C. 7401-7671g for nonattainment areas.

(114)(116) "Major modification" is defined by 40 C.F.R. 51.165(a)(1)(v) for 401 KAR 51:052 and by 40 C.F.R.



51.166(b)(2) for 401 KAR 51:017 [means a physical change in or a change in the method of operation of a major stationary source that results] [would result] [in a significant emissions increase and a significant net emissions increase of a regulated NSR pollutant.

(a) A significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or nitrogen oxides is considered significant for ozone.

(b) A physical change or change in the method of operation does not include:

1. Routine maintenance, repair, and replacement;
2. Use of alternative fuel or raw material by reason of an order or a natural gas curtailment plan in effect under a federal act;
3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
4. Use of an alternative fuel or raw material by a stationary source that:

a. The source was capable of accommodating before January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052, unless the change would be prohibited by [under] [a federally enforceable permit condition that was established after January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052, pursuant to 40 C.F.R. 51.165 or 51.166; or

b. The source is approved to use by [under] [a permit issued pursuant to 401 KAR 51:017 or] [401 KAR] [51:052;

5. An increase in the hours of operation or in the production rate, unless the change is prohibited by [under] [any federally enforceable permit condition established after January 6, 1975, for 401 KAR 51:017 or December 21, 1976, for 401 KAR 51:052 pursuant to 40 C.F.R. 52.21; after June 6, 1979, pursuant to 401 KAR 51:016; after September 22, 1982, pursuant to 401 KAR 51:017; or pursuant to] [under] [401 KAR 52:020 and] [401 KAR] [51:016];

6. A change in ownership at a stationary source;

7.] [The addition, replacement or use of a pollution control project at an existing emissions unit meeting the requirements of 401 KAR 51:017, Section 22 or 401 KAR 51:052, Section 13, as applicable;

8.] [The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

8.] [9.] [The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit, on a pollutant-by-pollutant basis, or

9.] [10.] [The reactivation of a very clean coal-fired electric utility steam-generating unit.

(c) The definition does [shall] [not apply] [with respect] [to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 401 KAR 51:017, Section 20] [23] [and 401 KAR 51:052, Section 11] [14] [for a PAL for that pollutant. Instead, the definition at subsection (175)] [(177)] [of this section applies] [shall apply].

(115)] [(117)] "Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.

(116)] [(148)] "Major source" means a source with a potential emission rate equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, carbon monoxide, or ODS.

(117)] [(149)] "Major source baseline date" means:

(a) For particulate matter and sulfur dioxide, January 6, 1975; and

(b) For nitrogen dioxide, February 8, 1988.

(118)] [(120)] (a) "Major stationary source" means:

1.a. A stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant, except that the following lower emissions thresholds apply:

(i) For ozone nonattainment areas: 100 tons per year or more of volatile organic compounds or nitrogen oxides in a marginal or moderate ozone nonattainment area; fifty (50) tons per year or

more of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area, twenty-five (25) tons per year or more of volatile organic compounds or nitrogen oxides in a severe ozone nonattainment area; or ten (10) tons per year or more of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area;

(ii) Fifty (50) tons per year or more of carbon monoxide in a serious carbon monoxide nonattainment area where stationary sources contribute significantly to carbon monoxide levels; and

(iii) Seventy (70) tons per year or more of particulate matter (PM<sub>10</sub>) in a serious PM<sub>10</sub> nonattainment area; or

b.(i) For the PSD program, any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants with thermal dryers, kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140, fossil fuel boilers, or combination of fossil fuel boilers, totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(ii) Regardless of 2. With the exception of [Notwithstanding] the stationary source size specified in subparagraph 1b of this paragraph, a stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

2.] (3.) Any physical change that will occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change will constitute a major stationary source by itself.

(b) A major stationary source that is major for volatile organic compounds or nitrogen oxides is considered major for ozone.

(c) The fugitive emissions of a stationary source are not included in determining if the source is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140;
21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;

24. Glass fiber processing plants;  
 25. Charcoal production plants;  
 26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or

27. ~~Another~~[Any] stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

(119) [(124)] "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that is reasonably preventable[that could have been reasonably prevented].

(120) [(122)] "Mandatory Class I area" means an area identified in 40 C.F.R. Part 81, Subpart D, if the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

(121) [(123)] "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(122) [(124)] "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(123) [(125)] "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes if [when] a unit lacks certified monitors to report heat input and is:

(a) A value calculated according to 40 C.F.R. Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 C.F.R. Part 75, Appendix D to report heat input; or

(b) A value reported according to 40 C.F.R. Part 75 using the maximum potential flow rate and either the maximum percent CO<sub>2</sub> concentration (in percent CO<sub>2</sub>) or the minimum percent O<sub>2</sub>, if the unit intends to use a flow monitor and a diluent gas monitor.

(124) [(126)] "Maximum potential NO<sub>x</sub> emission rate" means the emission rate of NO<sub>x</sub> (in lb per MMBTU) calculated according to 40 C.F.R. Part 75, Appendix F, Section 3, using the maximum potential NO<sub>x</sub> concentration as defined in 40 C.F.R. Part 75, Appendix A, Section 2, and the maximum percent O<sub>2</sub> or the minimum percent CO<sub>2</sub> under all operating conditions of the unit except for unit startup, shutdown, and malfunction.

(125) [(127)] "Maximum rated hourly heat input" means a unit specific maximum hourly heat input (MMBTU) that is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(126) [(128)] "µg" means microgram.

(127) [(129)] "mg" means milligram.

(128) [(130)] "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NO<sub>x</sub> emissions through:

(a) Burning part of the fuel at a lower temperature; and

(b) Reducing conditions at the solid waste injection point that may destroy some of the NO<sub>x</sub> formed upstream in the kiln burning zone.

(129) [(131)] "min" means minute.

(130) [(132)](a) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 C.F.R. 52.21 or to administrative regulations approved under 40 C.F.R. 51.166 submits a complete application under applicable administrative [the relevant] regulations.

1. For particulate matter and sulfur dioxide, the trigger date is August 7, 1977; and

2. For nitrogen dioxide, the trigger date is February 8, 1988.

(b) A minor source baseline date established originally for the TSP increments remains in effect to determine the amount of available PM<sub>10</sub> increments, except that the cabinet may rescind the minor source baseline date pursuant to 40 C.F.R. 51.166(b)(14)(iv) if it is demonstrated [shown] to the satisfaction of the cabinet, that the emissions increase from the major modification responsible for triggering that date did not result in a significant

amount of PM<sub>10</sub> emissions.

(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification will construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) for the pollutant on the date of its complete application pursuant to 401 KAR Chapter 52 [under the relevant regulations]; and

2. For a major stationary source, the pollutant will be emitted in significant amounts or a significant net emissions increase of the pollutant will occur for a major modification.

(131) [(133)] "MJ" means megajoules.

(132) [(134)] "mm" means millimeter.

(133) [(135)] "MM" means million.

(134) [(136)] "mo" means month.

(135) [(137)] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(136) [(138)] "Modification" means any physical change in, or a change in the method of operation of, an affected facility that:

(a) Increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, and/or replacement that the cabinet determines to be routine for a source category;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility is considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change;

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, unless an emission control system is removed or replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source.

(137) [(139)] "Monitoring device" means the total equipment, required by an [a] applicable administrative regulation in 401 KAR Chapters 50 to 65 [regulations], used to measure and record, if applicable, process parameters.

(138) [(140)] "Monitoring system" means a monitoring system that meets the requirements of 40 C.F.R. Part 96.

(139) [(141)] "MWe" means megawatt electrical.

(140) [(142)] "N<sub>2</sub>" means nitrogen.

(141) [(143)] "Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time if not restricted by seasonal or other deratings as measured with United States Department of Energy standards pursuant to 40 C.F.R. 96.2

(142) [(144)] "Natural conditions" means those naturally[-] occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(143) [(145)] "Necessary preconstruction approvals or permits" means those permits or approvals required under the administrative regulations approved to the Kentucky SIP pursuant to 40 C.F.R. 52.920, and federal air quality control laws and regulations established pursuant to 42 U.S.C. 7401-7671g.

(144) [(146)](a) "Net emissions increase" means, for any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:

1. An increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to 401 KAR 51:017, Section 1(4), or 401 KAR 51:052, Section 1(2); and

2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable Baseline actual emissions for calculating increases and decreases under this paragraph are determined in this section.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if:

1. For construction that commences prior to January 6, 2002, the change occurs between the date ten (10) years before construction on the change commences, and the date that the increase from the change occurs; and

2. For construction that commences on and after January 6, 2002, the change occurs between the date five (5) years before construction on the change commences, and the date that the increase from the change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

1. The cabinet or the U.S. EPA has not relied on the change in issuing a permit for the source pursuant to 401 KAR 51.017, [401 KAR] 51.052, or 40 C.F.R. 52.21; and

2. The permit is in effect at the time the increase or decrease in actual emissions from the particular change occurs [; and

3. ~~The increase or decrease in emissions did not occur at a clean unit, except as provided in 401 KAR 51.047, Sections 20(7) or 21(9) or 401 KAR 51.052, Sections 11(7) or 12(9).]~~

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. For particulate matter, only PM<sub>10</sub> emissions are used to evaluate the net emissions increase for PM<sub>10</sub>.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. The decrease is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

3. The decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change [; and

4. ~~The decrease did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under 40 C.F.R. 52.21(y) or under administrative regulation approved pursuant to 40 C.F.R. 51.166(u) or 51.165(d).]~~

(g) An increase that results from a physical change at a source occurs if the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(h) The term, actual emissions, as defined in subsection (2) of this section does not apply in determining creditable increases and decreases.

**(145) [(147)] "New source"** means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation, irrespective of a change in emission rate.

**(146) [(148)] "Nitrogen oxides"** means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

**(147) [(149)] "ng"** means nanograms.

**(148) [(150)] "NO"** means nitric oxide.

**(149) [(151)] "NO<sub>2</sub>"** means nitrogen dioxide.

**(150) [(152)] "Nonattainment major new source review program" or "NSR program"** means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.165 and 40 C.F.R. Part 51, Appendix S.

**(151) [(153)] "NOx"** means nitrogen oxides.

**(152) [(154)] "NOx allowance"** means an authorization to emit one (1) ton of NOx during a control period under the NOx Budget Trading Program.

**(153) [(155)] "NOx Allowance Tracking System (NATS)"** means the system by which the U.S. EPA records allocations, deductions, and transfers of NOx allowances under the NOx Budget Trading Program.

**(154) [(156)] "NOx authorized account representative"** means the [natural] person who is authorized by the owner or operator to:

(a) Represent and legally bind the owner and operator in all matters pertaining to the NOx Budget Trading Program in accordance with 40 C.F.R. Part 96, Subpart B for a NOx budget source and all NOx budget units at the source; and

(b) Transfer or otherwise dispose of NOx allowances held in the general account in accordance with 40 C.F.R. Part 96, Subpart F, for a general account.

**(155) [(157)] "NOx budget emissions limitation"** means, for a NOx budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under 401 KAR 51:160 adjusted by deductions of sufficient NOx allowances to account for:

(a) Actual utilization under 40 C.F.R. 96.42(e) for the control period;

(b) Excess NOx emissions for a prior control period under 40 C.F.R. 96.54(d);

(c) Withdrawal from the NOx budget program under 40 C.F.R. 96.86, or

(d) A change in regulatory status for a NOx budget opt-in source under 40 C.F.R. 96.87.

**(156) [(158)] "NOx budget opt-in source"** means an affected facility that has elected to become a NOx budget unit under the NOx Budget Trading Program and whose NOx budget opt-in permit has been issued and is in effect.

**(157) [(159)] "NOx budget source"** means a source that includes one (1) or more NOx budget units.

**(158) [(160)] "NOx Budget Trading Program"** means the multistate NOx air pollution control and emission reduction program established and administered by the U.S. EPA under 40 C.F.R. 51.121 or 52.34, as a means of mitigating the interstate transport of O<sub>3</sub>, O<sub>3</sub> precursors, and NOx.

**(159) [(161)] "NOx budget unit"** means a unit that is subject to the NOx Budget Trading Program emissions limitation under 401 KAR 51:160 or 40 C.F.R. 96.80.

**(160) [(162)] "NOx budget unit operator"** means a person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn and includes a holding company, utility system, or plant manager of a NOx budget unit or source.

**(161) [(163)] "NOx budget unit owner"** means:

(a) A holder of a portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement ~~and~~ [However,] unless expressly provided for in a leasehold agreement, ~~does~~ [NOx budget unit owner shall] not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn; or

(d) For any general account, a person who has an ownership interest with respect to the NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership.

**(162) [(164)] "O<sub>2</sub>"** means oxygen.

(163) [(465)] "O<sub>3</sub>" means ozone.

(164) [(466)] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(165) [(467)] "Operating" means, for a NOx budget unit, having documented heat input for more than 876 hours in the six (6) months immediately preceding the submission of an application for an initial NOx budget permit.

(166) [(468)] "Operator" means, for a NOx budget unit, any person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or unit for which an application for a NOx budget opt-in permit is submitted and not denied or withdrawn, and includes any holding company, utility system, or plant manager of the unit or source.

(167) [(469)] "Opt-in" means to be elected to become a NOx budget unit under the NOx Budget Trading Program through a final NOx budget opt-in permit.

(168) [(470)] "Owner" means, for a NOx budget unit, the following persons:

(a) A holder of any portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. Part 96.83 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner does not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn, or

(d) With respect to a general account, a person who has an ownership interest with respect to NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership interest with respect to NOx allowances.

(169) [(474)] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(170) [(472)] "oz" means ounce.

(171) [(473)] "Ozone depleting potential" or "ODP", as determined by consulting 40 C.F.R. Part 82, Subpart A, Appendices A and B, means the ratio of the total amount of ozone destroyed by a fixed amount of an ozone depleting substance to the amount of ozone destroyed by the same mass of trichlorofluoromethane (CFC-11) in which the ozone depleting potential of CFC-11 is equal to one and zero tenths (1.0); CFC-11, i.e., the ODP of CFC-11 equals 1.0.

(172) [(474)] "Ozone depleting substance" or "ODS" means any chemical compound regulated under 40 C.F.R. Part 82 with decay products, after the photolysis of the ODS by short-wave ultraviolet light, that are able to catalyze the destruction of stratospheric ozone.

(173) [(475)] "PAL effective date" means:

(a) The date of issuance of the PAL permit, or

(b) For an increased PAL, the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(174) [(476)] "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(175) [(477)] "PAL major modification" means any physical change in or a change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(176) [(478)] "PAL permit" means the permit issued by the cabinet that establishes a PAL for a major stationary source.

(177) [(479)] "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(178) [(480)] "Particulate matter" means a material, except

uncombined water that exists in a finely divided form as a liquid or a solid measured by an approved test method.

(179) [(484)] "Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP [approved state implementation plan].

(180) [(482)] "Peak load" means the maximum instantaneous operating load.

(181) [(483)] "Permitted capacity factor" means the annual permitted fuel use divided by the manufacturer's specified maximum fuel consumption multiplied by 8,760 hours per year.

(182) [(484)] "Person" is defined by KRS 224.01-010(17).

(183) [(486)] "Plant-wide applicability limitation" or "PAL" means an emission limitation, expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and is established source-wide in accordance with 401 KAR 51:017 or 51:052, Section 23 or 401 KAR 51:052, Section 44.

(184) [(486)] "PM<sub>2.5</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths [two-and-a-half] (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix L, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(185) [(487)] "PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix J and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(186) [(488)] "PM<sub>10</sub> emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method[,] or an equivalent or alternative method, specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP [approved state implementation plan].

(187) [(489)] "Pollution control project" or "PCP" means an activity, set of work practices, or project, including pollution prevention, undertaken at an existing emissions unit that reduces emissions of air pollutants from that unit in accordance with 401 KAR 51:017, Section 22 or 401 KAR 51:052, Section 13. Qualifying activities or projects include:

(a) Conventional or advanced flue gas desulfurization or sorbent injection for control of SO<sub>2</sub>;

(b) Electrostatic precipitators, baghouses, high efficiency multienes, or scrubbers for control of particulate matter or other pollutants;

(c) Flue gas recirculation, low-NOx burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion for internal combustion (IC) engines, and oxidation absorption catalyst for control of NOx;

(d) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of VOCs or HAPs;

(e) An activity or project to accommodate switching, or partially switching, to an inherently less polluting fuel, to be limited to the following:

1. Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five one-hundredths (0.05) percent sulfur diesel;

2. Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;

3. Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide-treated wood, and other forms of unclean wood;

4. Switching from coal to #2 fuel oil with a five-tenths (0.5) percent maximum sulfur content; and

5. Switching from high sulfur coal to low sulfur coal with a maximum one and two-tenths (1.2) percent sulfur content; and

(f) Activities or projects undertaken to accommodate switching from the use of an ozone-depleting substance (ODS) to the use of a substance with a lower or zero ozone-depletion potential (ODP), including changes to equipment needed to accommodate an activity or project described in subparagraphs 1 and 2 of this paragraph.

1. The productive capacity of the equipment is not increased as a result of the activity or project; and

2. The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS, determined by:

a. Determining the ODP of the substances by consulting 40 C.F.R. Part 82, Subpart A, Appendices A and B;

b. Calculating the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS;

c. Calculating the projected ODP-weighted amount by multiplying the projected annual usage of the new substance by its ODP, and

d. If the value calculated in clause b of this subparagraph is more than the value calculated in clause c of this subparagraph, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

(199) [(199)] "Pollution prevention" means any activity that through process changes, product reformulation or redesign or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants to the environment, including fugitive emissions, prior to recycling, treatment, or disposal and does not include recycling, other than certain in-process recycling practices, energy recovery, treatment, or disposal.

(188) [(191)] "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.

(189) [(192)] "Portland cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(190) [(193)] "Potential to emit" or "PTE" means:

(a) The maximum capacity of a stationary source to emit a pollutant under its physical and operational design, in which [where]

1. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is/are [shall be] treated as part of its design if the limitation is enforceable as a practical matter; and

2. This definition does not alter or affect the use of this term for other purposes of the Clean Air Act, 42 U.S.C. 7401-7671q, or the term "capacity factor" as used in the Acid Rain Program.

(b) For the PSD and NSR programs, the maximum capacity of a stationary source to emit a pollutant under its physical or operational design, in which [where]:

1. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation or the effect it would have on emissions:

a. Is federally enforceable; or

b. For an actuals PAL, is federally enforceable or enforceable as a practical matter; and

2. Secondary emissions are not counted.

(191) [(194)] "ppb" means parts per billion.

(192) [(195)] "ppm" means parts per million.

(193) [(196)] "ppm(w/w)" means parts per million (weight by weight).

(194) [(197)] "Precalciner kiln" means a kiln in which [where] the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.

(195) [(198)] "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters, such as control device

secondary voltages and electric currents, and to monitor control device operational parameters [other information], such as gas flow rate, ozone or carbon dioxide concentrations, and to calculate and record the mass emissions rate on a continuous basis.

(196) [(199)] "Preheater kiln" means a kiln in which [where] the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(197) [(200)] "Prevention of Significant Deterioration Program" or "PSD Program" means a major source preconstruction program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.166 or 52.21.

(198) [(201)] "Primary pollutant" means a regulated NSR pollutant for which a pollution control project is undertaken to reduce emissions of that pollutant.

(202) [(203)] "Project" means a physical change in or change in method of operation of an existing major stationary source.

(199) [(203)] "Projected actual emissions" means:

(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one (1) of the five (5) years, in a twelve (12) month period, following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if:

1. The project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; and

2. Full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) To determine projected actual emissions, before beginning actual construction, the owner or operator of the major stationary source:

1.a. Considers all relevant information, including historical operational data and the company's own representations of expected and highest projected business activity, [.] filings with the cabinet and the U.S. EPA, [.] and compliance plans under the Kentucky SIP;

b. Includes fugitive emissions and emissions associated with startups, shutdowns, and malfunctions; and

c. Excludes, in calculating any increase in emissions that results from a project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the project, including any increased utilization due to product demand growth; or

2. Elects to use the emissions unit's potential to emit, in tons per year, instead of using subparagraph 1 of this paragraph to determine projected actual emissions.

(200) [(204)] "psia" means pounds per square inch absolute.

(201) [(205)] "psig" means pounds per square inch gage.

(202) [(206)] "RACT/BACT/LAER Clearinghouse" or "RBLC" means the U.S. EPA's online collection of previous RACT/BACT/LAER determinations.

(203) [(207)] "Reactivation of a very clean coal-fired EUSGU" means a physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:

(a) Has not been in operation for the two (2) year period between November 15, 1988, and November 15, 1990, and the emissions from that unit continue to be earned in the Kentucky emissions inventory after November 15, 1990,

(b) Was equipped prior to shutdown with a continuous system of emissions control achieving a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent,

(c) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(d) Is otherwise in compliance with the requirements of 42 U.S.C. 7401 to 7671q.

(204) [(208)] "Reasonable further progress" means annual incremental reductions in emissions of the relevant air pollutant as required by 42 U.S.C. 7501 to 7515 or may reasonably be required

by the U.S. EPA for the purpose of ensuring the attainment of the applicable ambient air quality standard by the applicable date specified.

(205)(209) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65.

(206)(240) "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N; 40 C.F.R. Part 53; 40 C.F.R. Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.

(207)(244) "Regulated NSR pollutant" means the following:

(a) A pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the U.S. EPA;

(b) A pollutant [that is] subject to any standard promulgated under 42 U.S.C. 7411;

(c) A pollutant [that is] subject to a standard promulgated under or established by 42 U.S.C. 7671 to 7671q; or

(d) A pollutant that otherwise is subject to regulation under 42 U.S.C. 7401 to 7671q, except that any hazardous air pollutant (HAP) listed in 42 U.S.C. 7412 or added to the list pursuant to 42 U.S.C. 7412(b)(2), that has not been delisted pursuant to 42 U.S.C. 7412(b)(3), is not a regulated NSR pollutant unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under 42 U.S.C. 7408.

(208)(242) "Replacement unit" means an emissions unit that does not generate creditable emissions reductions by shutting down the existing emissions unit that is replaced, and that:

(a) 1. Is a reconstructed unit within the meaning of 40 C.F.R. 60.15(b)(1) or that completely takes the place of an existing emissions unit;

2. Is identical to or functionally equivalent to the replaced emissions unit; and

3. Does not alter the basic design parameters of the process unit.

(b) Replaces a unit that:

1. Is permanently removed from the major stationary source, is otherwise permanently disabled, or is prohibited from operating by a permit that is enforceable as a practical matter; and

2. If brought back into operation, is considered a new emissions unit.

(209)(243)(a) "Repowering" means:

(a)(1) Replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies:

1. Atmospheric or pressurized fluidized bed combustion;

2. Integrated gasification combined cycle;

3. Magneto hydrodynamics;

4. Direct and indirect coal-fired turbines;

5. Integrated gasification fuel cells; or

6. Pursuant to 40 C.F.R. 51.166, as determined by the U.S.

EPA in consultation with the Secretary of Energy;

a. A derivative of one (1) or more of the technologies listed in subparagraphs 1 to 5 of this paragraph; or

b. Another technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(b) [atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magneto hydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the U.S. EPA in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, or another technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; and

2.] An oil or gas-fired unit that has been awarded clean coal

technology demonstration funding as of January 1, 1991 by the Department of Energy.

(c)(b) A permit application from a source pursuant to this subsection receives [that satisfies this definition shall receive] expedited consideration by the cabinet and is granted an extension under 42 U.S.C. 7651h.

(210)(244) "Responsible official" means:

(a) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly-authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit; and

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25,000,000 in second quarter 1980 dollars; or

2. The delegation of authority to the representative is approved in advance by the cabinet pursuant to this subsection;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. The principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(211)(246) "Run" means the net period of time, either intermittent or continuous within the limits of good engineering practice, when an emission sample is collected.

(212)(246) "S" means at standard conditions.

(213)(247) "sec" means second.

(214)(248) "Secondary emissions" means emissions that:

(a) Occur as a result of the construction or operation of a major stationary source or major modification, and do not come from the major stationary source or major modification itself;

(b) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification that causes the secondary emissions;

(c) Include emissions from an offsite support facility that would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and

(d) Do not include emissions that come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, a train, or vessel.

(215)(249) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(216)(220) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(217)(224) "Shutdown" means the cessation of an operation.

(218)(222) "Significant" means:

(a) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate matter emissions 15 tpy of PM <sub>10</sub> emissions
Ozone	40 tpy of volatile organic compounds or nitrogen oxides



Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H <sub>2</sub> S)	10 tpy
Total reduced sulfur (including H <sub>2</sub> S)	10 tpy
Reduced sulfur compounds (including H <sub>2</sub> S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzop-dioxins and dibenzofurans)	3.2 x 10 <sup>-8</sup> megagrams per year (Mg/y) (3.5 x 10 <sup>-6</sup> tpy)
Municipal waste combustor metals (measured as particulate matter)	14 Mg/y (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 Mg/y (40 tpy)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	35 Mg/y (50 tpy)

(b) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in the table in paragraph (a) of this subsection, any emissions rate.

(c) For 401 KAR 51:017, in reference to an emissions rate or a net emissions increase associated with a major stationary source or major modification, that is to be constructed within ten (10) kilometers of a Class I area, an impact on that area equal to or greater than one (1) µg/m<sup>3</sup> over a twenty-four (24) hour average.

(d) For 401 KAR 51:052, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

(e) For 401 KAR 51:052, with the exception of the significant emissions rate for ozone in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions that exceeds the following:

1. Twenty-five (25) tons per year of volatile organic compounds or nitrogen oxides in a serious or severe ozone nonattainment area; or

2. Any increase in actual emissions of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area.

(f) For 401 KAR 51:052, with the exception of the significant emissions rate for carbon monoxide in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions of carbon monoxide that equals or exceeds fifty (50) tons per year in a serious nonattainment area for carbon monoxide in which a stationary source contributes significantly to carbon monoxide levels.

(219)(223) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is equal to or greater than the emission level that is significant for that pollutant.

(220)(224) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the applicable significant level as defined in subsection (218) of subsection (224) of this section or in 42 U.S.C. 7401 to 7671q, whichever is lower for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

(221)(225) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the PAL pollutant's applicable significant level as defined in subsection (218) of subsection (220) of this section;

or in 42 U.S.C. 7401 to 7671q, whichever is lower.

(222)(226) "SO<sub>2</sub>" means sulfur dioxide.

(223)(227) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(224)(228) "sq" means square.

(225)(229) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(226)(230) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in 401 KAR Chapters 50 to 65 [the administrative regulations of the Division for Air Quality] or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(227)(231) "Standard conditions" means:

(a) For source measurements, twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg).

(b) For air quality determinations, twenty-five (25) degrees Celsius (seventy-seven (77) degrees Fahrenheit) and a reference pressure of 760 mm Hg (29.92 in. of Hg).

(228)(232) "Start-up" or "start-up" means the setting in operation of an affected facility.

(229)(233) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410 that has been approved by the U.S. EPA.

(230)(234) "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

(231)(235) "Submit" means to send or transmit a document, information, or correspondence in accordance with an applicable requirement.

(232)(236) "TAPPI" means Technical Association of the Pulp and Paper Industry.

(233)(237) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project [that is] operated for a period of five (5) years or less and that complies with the Kentucky SIP and with other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

(234)(238) "Ton" or "tonnage" means, for a NOx budget source, a short ton or 2,000 pounds. For determining compliance with the NOx budget emissions limitation, total tons for a control period is calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 C.F.R. Part 96, Subpart H with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(235)(239) "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

(236)(240) "tpy" means tons per year.

(237)(241) "TSS" means total suspended solids.

(238)(242) "Uncombined water" means water that can be separated from a compound by ordinary physical means and that is not bound to a compound by internal molecular forces.

(239)(243) "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(240)(244) "Urban county" means a county that is a part of an urbanized area with a population [of] greater than 200,000 based upon the 1980 census. If a portion of a county [is] a part of an urbanized area, then the entire county [is] classified as urban for 401 KAR Chapters 50 to 65 [the administrative regulations of the Division for Air Quality].

(241)(245) "Urbanized area" means an area defined by the U.S. Department of Commerce, Bureau of Census.

(242)(246) "U.S. EPA" means the United States Environmental Protection Agency.

(243)(247) "UTM" means Universal Transverse Mercator.

(244)(248) "Visibility impairment" means a humanly perceptible change in visibility such as visual range, contrast, or coloration, from that which would have existed under natural conditions.

(245)(249) "Volatile organic compound" or "VOC" is defined in



40 C.F.R. 51.100(s).

(246)(250) "yd" means yard.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Industrial Classification Manual", 1987, as published by the Office of Management and Budget[?;

(b) "40 C.F.R. Part 82, Appendix A to Subpart A of Part 82—Class I Controlled Substances, as published in the Code of Federal Regulations, July 1, 2003"; and

(c) "40 C.F.R. Part 82, Appendix B to Subpart A of Part 82—Class II Controlled Substances, as published in the Code of Federal Regulations, July 1, 2003".

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4.30 p.m., local time:

(a) Kentucky Division for Air Quality, 200 Fair Oaks Lane, 1st floor (803-Sehenkel Lane), Frankfort, Kentucky 40601-1403, (502) U564-3999 (573-3382);

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358

(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g)(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(h)(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304;

(i)(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468; and

(j)(i) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358.

(3)(a) The Standard Industrial Classification Manual is also available under Order No. PB 87-100012 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, phone (703) 487-4650. (b) Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Attn: New Orders, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, phone (202) 512-1800, fax (202) 512-2250.]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at noon

CONTACT PERSON: Laura Lund, Environmental Technologist II, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, ext. 4428, fax (502) 564-4666, and email Laura\_Lund@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund, Environmental Technologist II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 401 KAR Chapter 51.

(b) The necessity of this administrative regulation: This administrative regulation defines the terms used in 401 KAR Chapter 51.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The definitions regulation assists the public and the regulated community by defining the terms used in 401 KAR Chapter 51.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative

regulation: This amendment revises the definitions to mirror amendments made at the federal level. It does not change the intent of the existing regulation. Amendments in formatting and grammar were also necessary in order to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment revises the definition of terms used in Kentucky's Prevention of Significant Deterioration (PSD) and New Source Review (NSR) regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments are based upon federal revisions affecting Kentucky's PSD and NSR regulations.

How the amendment will assist in the effective administration of statutes: The amendments will provide the definitions of terms used in 401 KAR Chapter 51.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation does not directly impact individuals, organizations, or state and local governments.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This regulation does not directly impact individuals, organizations, or state and local governments.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation does not directly impact individuals, organizations, or state and local governments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no direct benefits related to this regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. This regulation will not require an increase in fees or funding in order to implement its provisions.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase, any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applicable because this regulation provides the definitions of terms for 401 KAR Chapter 51 and imposes no requirements.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation. However, recent changes in the federal PSD/NSR Program make it necessary to revise the regulation in order to ensure program parity.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this regulation. However, changes in the federal definitions for this program necessitate changes in the state definitions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation imposes no requirements because it only provides definitions of

terms used in 401 KAR Chapter 51.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division for Air Quality implements this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Cabinet's existing operating budget continues as the source of funding to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no direct costs associated with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amended After Comments)

401 KAR 51:017. Prevention of significant deterioration of air quality.

RELATES TO: KRS 224.10-100, 40 C.F.R. 51 Subpart I, Appendix S, sec. IV, Part 51, Appendix W, 51.166, 52.21, 52.26, 53, 58 Appendix A, 60, 61, 63, 70.6 [Part 58, Appendix A] [B] [-60, -61, -63], 81.318, 81 Subpart D, 42 U.S.C. 7401-7671q [(Clean Air Act)], 4321-4370d, EO 2009-538 [(National Environmental Policy Act)]

STATUTORY AUTHORITY: KRS 224.10-100(5), 40 C.F.R. 51.166, 52.21, 42 U.S.C. 7401-7671q, EO 2009-538 [(Clean Air Act)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 ~~requires~~ authorizes the ~~[requires the Environmental and Public Protection] cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. EO 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet.~~ This administrative regulation provides for the prevention of significant deterioration of ambient air quality. The provisions of this administrative regulation are not different nor more stringent than the federal regulation, 40 C.F.R. 51.166.

Section 1. Applicability. (1) This administrative regulation shall apply to the construction of a new major stationary source or a

[any] project at an existing major stationary source that commences construction after September 22, 1982, and locates in an area designated attainment or unclassifiable under 42 U.S.C. 7407(d)(1)(A)(ii) and (iii).

(2) Except as otherwise provided in this administrative regulation, the provisions of Sections 8 to 16 of this administrative regulation shall apply to the construction of a new major stationary source or a major modification of an existing major stationary source.

(3) The owner or operator of a new major stationary source or major modification, which is subject to the requirements of Sections 8 to 16 of this administrative regulation, shall not begin actual construction without a proposed permit or proposed permit revision issued under 401 KAR 52.020 stating that the major stationary source or major modification shall meet those requirements.

(4) Applicability tests for projects. Except as provided in subsection (5) ~~[or (6)]~~ of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed according to subparagraphs 1 to 3[4] of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. ~~[Emissions test for projects that involve clean units. An emission increase shall not be deemed to occur for a project that will be constructed and operated at a clean unit without causing the unit to lose its clean unit designation as provided in Sections 20 and 21 of this administrative regulation.]~~

4. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using a method specified in subparagraphs 1 and 2 ~~[to 3]~~ of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable procedure ~~established in~~ [of] paragraph (a) of the subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51.001, Section 1(144) and (218) ~~[(446)]~~

(5) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 20[23] of this administrative regulation. ~~[(6) An owner or operator undertaking a pollution control project (PCP) shall comply with Section 22 of this administrative regulation.]~~

Section 2. Ambient Air Increments. (1) In areas designated as Class I or II, increases in pollutant concentration over the baseline concentration shall be limited to the following levels:

Pollutant	Maximum Allowable Increase (Micrograms per cubic meter)
<b>Class I</b>	
<b>Particulate Matter</b>	
PM <sub>10</sub> , annual arithmetic mean	4
PM <sub>10</sub> , 24-hour maximum	8
<b>Sulfur Dioxide</b>	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25

Nitrogen Dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate Matter:	
PM <sub>10</sub> , annual arithmetic mean	17
PM <sub>10</sub> , 24-hour maximum	30
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen Dioxide:	
Annual arithmetic mean	25

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

**Section 3. Ambient Air Ceilings.** The concentration of a regulated NSR pollutant shall not exceed the concentration allowed under the national secondary ambient air quality standard or under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.[-]

**Section 4. Restrictions on Area Classifications.** (1) The following areas, which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

- (a) International parks;
  - (b) National wilderness areas and national memorial parks that [which] exceed 5,000 acres in size; and
  - (c) National parks that [which] exceed 6,000 acres in size.
- (2) Any other area, unless otherwise specified in the legislation creating the area, shall be [is] designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources that [which] may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

- (a) An area that [which] as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and
- (b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

**Section 5. Exclusions from Increment Consumption.** (1) Pursuant to ~~The cabinet may, after~~ notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 52:100, the cabinet may exclude the following concentrations in determining compliance with a maximum allowable increase.

(a) Concentrations attributable to the increase in emissions from stationary sources that have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from these sources before the effective date of the order;

(b) Concentrations attributable to the increase in emissions from sources that have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to a federal statute over the emissions from those sources before the effective date of the plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources [that are] affected by plan revisions approved by the Administrator of the U.S. EPA as meeting the criteria established [specified] in subsection (3) of this section.

(2)(a) Exclusion of concentrations shall not apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the curtailment plan to which

subsection (1)(b) of this section refers, whichever is applicable.

(b) If both an order and curtailment plan are applicable, an exclusion shall not apply more than five (5) years after the later of the two (2) effective dates.

(3) For excluding concentrations pursuant to subsection (1)(d) of this section:

(a) The time period over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur shall be specified and shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) The time period for excluding certain contributions in accordance with paragraph (a) of this subsection shall not be renewable;

(c) An emissions increase from a stationary source shall not occur that will:

1. Impact a Class I area or an area in which an applicable increment is known to be violated; or

2. Cause or contribute to the violation of a national ambient air quality standard, and

(d) Limitations shall be in effect at the end of the time period established in paragraph (a) of this subsection, which ensure that the emissions levels from stationary sources affected by the SIP revision shall not exceed the levels occurring from those sources before the revision was approved.

**Section 6. Stack Heights.** (1) The degree of emissions limitation required for control of an air pollutant under this administrative regulation shall not be affected by:

(a) So much of the stack height of a source as exceeds good engineering practice; or

(b) Another dispersion technique.

(2) Subsection (1) of this section shall not apply to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

**Section 7. Exemptions.** (1) Sections 8 to 16 of this administrative regulation shall not apply to a particular major stationary source or major modification, if:

(a) The owner or operator:

1. Obtained the necessary federal, state, and local preconstruction approval effective before September 22, 1982;

2. Commenced construction before September 22, 1982; and

3. Did not discontinue construction for a period of eighteen (18) months or more.

(b) 1. The major stationary source is a nonprofit health institution, a nonprofit educational institution, or a major modification at such an institution; and

2. [and] the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements.

(c) The source or modification is a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants, furnace process;
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants, except ethanol production facili-

ties producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140;

21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;

22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

23. Taconite ore processing plants;

24. Glass fiber processing plants;

25. Charcoal production plants;

26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or

27. Another stationary source category that [which], as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

(d) The source or modification is a portable stationary source that has previously received a permit under this administrative regulation; and

1. The owner or operator proposes to relocate the source, and the emissions of the source at the new location will be temporary;

2. The emissions from the source will not exceed its allowable emissions;

3. The emissions from the source will not impact a Class I area or an area where an applicable increment is known to be violated; and

4. a. Reasonable notice is given to the cabinet prior to the relocation identifying the proposed new location and the probable duration of operation at the new location.

b. Notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet pursuant to this subsection.

(e) The source or modification was not subject to this administrative regulation with respect to particulate matter requirements in effect before July 31, 1987, and the owner or operator:

1. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable SIP before July 31, 1987;

2. Commenced construction within eighteen (18) months after July 31, 1987; and

3. Did not discontinue construction for a period of eighteen (18) months or more and completed construction within a reasonable period of time.

(f) 1. The source or modification was subject to this administrative regulation for particulate matter requirements in effect before July 31, 1987, and the owner or operator submitted an application for a permit under the applicable permit program before that date, and

2. The cabinet subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect.

(2) Sections 8 to 16 of this administrative regulation shall not apply to a major stationary source or major modification for a particular pollutant if the owner or operator demonstrates that, for that pollutant, the source or modification is located in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(3) Sections 9, 11, and 13 of this administrative regulation shall not apply to a proposed major stationary source or major modification for a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from a modification:

(a) Will not impact a Class I area or an area where an applicable increment is known to be violated; and

(b) Will be temporary.

(4) Sections 9, 11, and 13 of this administrative regulation, as applicable to a maximum allowable increase for a Class II area, shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT will be less than fifty (50) tons per year.

(5) The cabinet may exempt a proposed major stationary source or major modification from the monitoring requirements of Section 11 of this administrative regulation for a particular pollutant, if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification will cause air quality impacts in an area, which are less than the amounts listed in the following table; or

Pollutant	Air Quality Level	Averaging Time
Carbon monoxide	575 $\mu\text{g}/\text{m}^3$	8-hour average
Nitrogen dioxide	14 $\mu\text{g}/\text{m}^3$	annual average
Particulate matter	10 $\mu\text{g}/\text{m}^3$ of $\text{PM}_{10}$	24-hour average
Sulfur dioxide	13 $\mu\text{g}/\text{m}^3$	24-hour average
Ozone	No de minimis air quality level is provided for ozone. However, a net increase of 100 tons per year or more of volatile organic compounds subject to this administrative regulation is required to perform an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1 $\mu\text{g}/\text{m}^3$	3-month average
Fluorides	0.25 $\mu\text{g}/\text{m}^3$	24-hour average
Hydrogen sulfide	0.2 $\mu\text{g}/\text{m}^3$	1-hour average
Total reduced sulfur	10 $\mu\text{g}/\text{m}^3$	1-hour average
Reduced sulfur compounds	10 $\mu\text{g}/\text{m}^3$	1-hour average

(b) The concentrations of the pollutant in the area that the source or modification will affect are less than the concentrations listed in the table in paragraph (a) of this subsection, or the pollutant is not listed in the table.

(6) Permitting requirements equivalent to Section 9(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for nitrogen oxides, if:

(a) The owner or operator of the source or modification submitted an application for a permit or permit revision under the applicable permit program before the date on which the provisions embodying the maximum allowable increase took effect in the Kentucky SIP; and

(b) The cabinet subsequently determined that the application as submitted before that date was complete.

(7) Permitting requirements equivalent to Section 10(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for  $\text{PM}_{10}$ , if:

(a) The owner or operator of the source or modification submitted an application for a permit under the applicable permit program before the provisions embodying the maximum allowable increases for  $\text{PM}_{10}$  took effect as part of Kentucky's SIP; and

(b) The cabinet subsequently determined that the application as submitted before that date was complete.

(8)(a) The cabinet may determine that the requirements for air quality monitoring of  $\text{PM}_{10}$  in Section 11 of this administrative regulation shall not apply to a particular source or modification, if:

1. The owner or operator of the source or modification submitted an application for a permit under this section on or before June 1, 1988; and

2. The cabinet subsequently determines that the application as submitted before that date was complete, except for the requirements for monitoring particulate matter specified in Section 11 of this administrative regulation.

(b) The requirements for air quality monitoring of  $\text{PM}_{10}$  in Section 11 of this administrative regulation shall apply to a particular source or modification if the owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation after June 1, 1988, and not later than December 1, 1988.

1. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes complete in accordance with Section 11 of this administrative regulation; and

2. If the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter

period, which may not be less than four (4) months, the data that Section 11 of this administrative regulation requires shall have been gathered over that shorter period.

(9) If the owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation before the date the provisions embodying the maximum allowable increases for PM<sub>10</sub> took effect and the cabinet subsequently determined that the application as submitted before that date was complete, the requirements of Section 9(2) of this administrative regulation shall:

(a) Not apply to a stationary source or modification for a maximum allowable increase for PM<sub>10</sub>; and

(b) Apply for the maximum allowable increases for TSP as in effect on the day the application was submitted. [The requirements of Section 9(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for PM<sub>10</sub>, if:

(a) The owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation before the date the provisions embodying the maximum allowable increases for PM<sub>10</sub> took effect, and the cabinet subsequently determined that the application as submitted before that date was complete.

(b) Instead, the requirements of Section 9(2) shall apply for the maximum allowable increases for TSP as in effect on the day the application was submitted.]

Section 8. Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under the Kentucky SIP and each applicable emissions standard and standard of performance pursuant to 40 C.F.R. [under 40 C.F.R.] Parts 60 and 61.

(2) A new major stationary source shall apply BACT for each regulated NSR pollutant for which the source has the potential to emit in significant amounts.

(3) A major modification shall apply BACT:

(a) For each regulated NSR pollutant that results in a significant net emissions increase at the source; and

(b) For each proposed emissions unit at which a net emissions increase in the pollutant occurs as a result of a physical change or change in the method of operation of the unit.

(4) For phased construction projects:

(a) The cabinet shall review and modify, as appropriate, the BACT determination at the latest reasonable time occurring not [no] later than eighteen (18) months prior to commencement of construction of each independent phase of the project, and

(b) The owner or operator of the applicable stationary source may then be required to demonstrate the adequacy of a previous BACT determination for the source.

Section 9. Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emissions increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, shall not cause or contribute to air pollution in violation of:

(1) A national ambient air quality standard in an air quality control region; or

(2) An applicable maximum allowable increase over the baseline concentration in any area

Section 10. Air Quality Models. (1) Estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 C.F.R. Part 51, Appendix W, "Guideline on Air Quality Models" (2003), Appendix A.

(2) If an air quality model specified in 40 C.F.R. Part 51, Appendix W, is inappropriate, the model may be modified or another model substituted.

(a) The use of a modified or substitute model shall be:

1. Subject to notice and opportunity for public comment under 401 KAR 52.100; and

2. Made on a case-by-case basis and receive written approval

from the U.S. EPA

(b) Methods similar to those outlined in the "Workbook for the Comparison of Air Quality Models," specified in 401 KAR 50:040, Section 1(3), shall be used to determine the comparability of air quality models.

Section 11. Air Quality Analysis. (1) Preapplication analysis.

(a) An application for a permit or permit revision under 401 KAR 52.020 and this administrative regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification will affect for each of the following:

1. For a source, each pollutant that the source will have the potential to emit in a significant amount;

2. For a modification, each pollutant that the modification will result in a significant net emissions increase.

(b) For a pollutant that does not have a national ambient air quality standard, the analysis shall contain air quality monitoring data the cabinet determines necessary to assess ambient air quality for that pollutant in an area that the emissions of that pollutant will affect.

(c) For pollutants, other than nonmethane hydrocarbons, for which a standard exists, the analysis shall contain continuous air quality monitoring data gathered to determine if emissions of that pollutant will cause or contribute to a violation of the standard or a maximum allowable increase.

(d) 1. The required continuous air quality monitoring data shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application.

2. If the cabinet determines that a complete and adequate analysis may be accomplished with monitoring data gathered over a period shorter than one (1) year, that period shall be not less than four (4) months.

(e) For analysis of volatile organic compounds, the owner or operator of a proposed major stationary source or major modification who satisfies all conditions of 40 C.F.R. Part 51, Appendix S, section IV may provide postapproval monitoring data for ozone instead of providing preconstruction data as required in this section.

(f) For air quality monitoring of PM<sub>10</sub> under Section 7(8)(a) and (b) of this administrative regulation, the owner or operator of the source or major modification shall use a monitoring method approved by the cabinet pursuant to 40 C.F.R. Part 53 and shall estimate the ambient concentrations of PM<sub>10</sub> using the data collected by that approved monitoring method in accordance with estimating procedures approved by the cabinet pursuant to 40 C.F.R. Part 58, Appendix A.

(2) Postconstruction monitoring. After construction of a major stationary source or major modification, the owner or operator shall conduct ambient monitoring that the cabinet determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in an area.

(3) Operation of monitoring stations. During the operation of air quality monitoring stations, the owner or operator of a major stationary source or major modification shall meet the requirements of 40 C.F.R. Part 58, Appendix A[B] to satisfy the air quality analysis requirements of this section.

Section 12. Source Information. The owner or operator of a proposed source or modification shall submit to the cabinet all information necessary to perform an analysis or make a determination required under this administrative regulation.

(1) The information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification; and

(c) A detailed description of the system of continuous emissions reduction planned for the source or modification, emissions estimates, and any [other] information necessary to determine that BACT will be applied.

(2) Upon request of the cabinet, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, includ-

ing meteorological and topographical data necessary to estimate the impact; and

(b) The air quality impacts and the nature and extent of general commercial, residential, industrial, and other growth that has occurred since August 7, 1977, in the area the source or modification will affect.

Section 13. Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that will occur as a result of:

(a) The source or modification; and

(b) General commercial, residential, industrial and other growth associated with the source or modification.

(2) The owner or operator shall not be required to provide an analysis of the impact on vegetation not having [ae] significant commercial or recreational value

(3) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

(4) Visibility monitoring.

(a) If the cabinet requires monitoring of visibility in a Class I area impacted by the proposed new stationary source or major modification, the monitoring shall be performed. ~~The cabinet may require monitoring of visibility in a Class I area impacted by the proposed new stationary source or major modification using.~~

1. ~~(1)~~ Human observations;

2. ~~(2)~~ Teleradiometers;

3. ~~(3)~~ Photographic cameras;

4. ~~(4)~~ Nephelometers;

5. ~~(5)~~ Fine particulate monitors; or

6. ~~(6)~~ Other U.S. EPA-approved methods ~~[appropriate methods as specified by the U.S. EPA].~~

(b) The method selected shall be determined on a case-by-case basis by the cabinet pursuant to 40 C.F.R. 51.166.

(c) Visibility monitoring required by the cabinet in a Class I area shall be approved by the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the U.S. EPA, and the federal land manager, upon request.

Section 14. Sources Impacting Class I Areas; Additional Requirements. (1) Notice to U.S. EPA and federal land managers. The cabinet shall provide;

(a) Written notice to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of lands within a Class I area of a permit application for a proposed major stationary source or major modification that may affect the Class I area

(b) Notice promptly after receiving the permit application. The notice shall

1. Include a copy of all information relevant to the permit application;[-]

2. Be given within thirty (30) days of receipt and at least sixty (60) days prior to the public hearing on the application for a permit to construct; and

3. Include an analysis of the proposed source's anticipated impacts on visibility in the Class I area

(c) The cabinet shall also provide the federal land manager and other federal officials with a copy of the preliminary determination and shall make available to them the materials used in making that determination, promptly after the cabinet makes it. The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an advanced notification of the permit application.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of lands located in a Class I area shall have an affirmative responsibility to protect visibility and other air quality related values of the lands and to consider, in consultation with the cabinet, if a proposed source or modification will have an adverse impact on those values.

(3) Visibility analysis.

(a) The cabinet shall consider an analysis performed by the federal land manager, which is provided within thirty (30) days of the notice and analysis required by subsection (1) of this section, which shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

(b) If the cabinet finds the analysis does not demonstrate to the cabinet's satisfaction that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation may be obtained.

(4) Denial; impact on air quality related values

(a) The federal land manager of lands located in a Class I area may demonstrate to the cabinet that the emissions from a proposed source or modification will have an adverse impact on the visibility and other air quality related values of those lands, even though the change in air quality resulting from emissions from the proposed source or modification will not cause or contribute to concentrations that will exceed the maximum allowable increases for a Class I area.

(b) If the cabinet concurs with the demonstration specified in paragraph (a) of this subsection, the cabinet shall not issue the permit or permit revision.

(5) Class I variances.

(a) The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from the source or modification will not have [ae] adverse impact on the visibility or other air quality related values of lands located in a Class I area, even though the change in air quality resulting from emissions from the source or modification will cause or contribute to concentrations that will exceed the maximum allowable increases for a Class I area as specified in Section 2(1) of this administrative regulation.

(b) If limitations are necessary, the cabinet may issue the permit or permit revision with emissions limitations necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides will not exceed the maximum allowable increases over minor source baseline concentration for the pollutants as specified in Section 2(1) of this administrative regulation if:

1. The federal land manager concurs with the demonstration specified in paragraph (a) of this subsection and certifies accordingly; and

2. The other applicable requirements of this administrative regulation are met. ~~[If the federal land manager concurs with the demonstration specified in paragraph (a) of this subsection and (he or she) certifies accordingly, the cabinet may, if the other applicable requirements of this administrative regulation are met, issue the permit or permit revision with emissions limitations] [that are] [necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides will not exceed the maximum allowable increases over minor source baseline concentration for the pollutants as specified in Section 2(1) of this administrative regulation.]~~

(6) Sulfur dioxide variance by governor with federal land manager's concurrence.

(a) The owner or operator of a proposed source or modification, which cannot be approved under subsection (5) of this section because the source cannot be constructed without exceeding a maximum allowable increase in sulfur dioxide applicable to a Class I area for a period of twenty-four (24) hours or less, may demonstrate to the Governor of the Commonwealth of Kentucky that a variance will not adversely affect the visibility or other air quality related values of the area.

(b) The governor, after consideration of the federal land manager's recommendation, if applicable, and subject to the federal land manager's [his] concurrence, may, after notice and public hearing, grant a variance from the maximum allowable increase.

(c) If a variance is granted, the cabinet shall issue a permit or permit revision to the source or modification under the requirements of 401 KAR Chapter 52 if the other applicable requirements of this administrative regulation are met.

(7) Variance by the governor with the President's concurrence

(a) If the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not



concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America.

(b) If the variance is approved by the President, the cabinet shall issue a permit or permit revision in accordance with the requirements of 401 KAR Chapter 52, if the other applicable requirements of this administrative regulation are met.

(8) Emissions limitations for presidential or gubernatorial variance. For a permit or permit revision issued pursuant to subsections (6) or (7) of this section, the source or modification shall comply with the emissions limitations necessary to assure that:

(a) Emissions of sulfur dioxide from the source or modification shall not, during a day on which the other applicable maximum allowable increases are exceeded, cause or contribute to concentrations that will exceed the maximum allowable increases over the baseline concentration as specified in the following table; and

Maximum Allowable Increase (Micrograms per cubic meter)		
Period of Exposure	Terrain areas	
	Low	High
24-hour maximum	36	62
3-hour maximum	130	221

(b) Emissions shall not cause or contribute to concentrations that exceed other applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than a total of eighteen (18) days which are not necessarily consecutive during an annual period.

Section 15. Public Participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100, [and] 40 C.F.R. 51.166(g), and this administrative regulation in processing applications under this administrative regulation.

Section 16. Source Obligation (1) An owner or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982, shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52:020 or under the terms of an approval to construct.

(2)(a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval;
  2. Is discontinued for a period of eighteen (18) months or more;
- or
3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory demonstrating [showing] that an extension is justified.

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with 401 KAR Chapters 50 to 68 and other requirements of local, state, or federal law.

(4) If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, Sections 8 to 16 of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5)(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a [clean-unit-or-at-a] source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator elects to use the method specified in 401 KAR 51:001, Section 1(199)(202)(b) to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;
2. Identification of the emissions units for which emissions of a regulated NSR pollutant could be affected by the project; and
3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

- a. Baseline actual emissions;
- b. Projected actual emissions;
- c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and
- d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall.

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by any emissions unit identified in paragraph (b)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis for:

- a. Five (5) years following resumption of regular operations after the change; or
- b. Ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of the regulated NSR pollutant at the emissions unit.

(d)[1-] If the emissions unit is an existing EUSGU, before beginning actual construction, the owner or operator:

1.[a-] Shall provide a copy of the information in paragraph (b) of this subsection to the cabinet;[i] but [b-] shall not be required to obtain a determination from the cabinet before beginning actual construction; and[-]

2. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that reports [set out] the unit's annual emissions during the calendar year that preceded submission of the report.

(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceeds the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant; and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:

- a. The name, address, and telephone number of the major stationary source;
- b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and
- c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under to this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 17. Environmental Impact Statements. If a proposed source or modification is subject to action by a federal agency that may [which might] necessitate preparation of an environmental impact statement under 42 U.S.C. 4321 to 4370d (the National Environmental Policy Act), review by the cabinet conducted in accordance with this administrative regulation shall be coordinated with the broad environmental reviews under that Act and under 42 U.S.C. 7609 to the maximum extent feasible and reasonable.

Section 18. Innovative Control Technology. (1) An owner or



operator of a proposed major stationary source or major modification may make a written request that the cabinet [request the cabinet in writing to] approve a system of innovative control technology.

(2) The cabinet may, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 8(2) of this administrative regulation by a date, specified by the cabinet ~~that is not later than~~. The date shall not be later than four (4) years from the time of start-up or seven (7) years from permit issuance;

(c) The source or modification ~~shall~~will meet requirements equivalent to those in Sections 8 and 9 of this administrative regulation based on the emissions rate that the stationary source employing the system of innovative control technology ~~shall~~will be required to meet on the date specified by the cabinet;

(d) The source or modification ~~shall~~will not before the date specified by the cabinet:

1. Cause or contribute to a violation of an applicable national ambient air quality standard; or

2. Impact an area in which an applicable increment is known to be violated;

(e) Section 14 of this administrative regulation relating to Class I areas has been satisfied for all periods during the life of the source or modification; and

(f) All other applicable requirements including those for public participation have been met.

(3) The cabinet shall withdraw approval to employ a system of innovative control technology if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) The proposed system fails before the specified date and contributes to an unreasonable risk to public health, welfare, or safety; or

(c) The cabinet decides that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the cabinet may allow the source or modification up to an additional three (3) years to meet the requirement for the application of BACT through use of a demonstrated system of control.

Section 19. Permit Condition Rescission. (1)(a) An owner or operator holding a permit for a stationary source or modification ~~that [which]~~ contains conditions pursuant to 401 KAR 51:015 or [401-KAR] 51:016E may request that the cabinet rescind the applicable conditions.

(b) An owner or operator of a stationary source or modification who holds a permit for the source or modification ~~that [which]~~ was issued under this administrative regulation as in effect on July 30, 1987, or an earlier version of this administrative regulation, may request that the cabinet rescind the permit or a particular portion of the permit.

(2) The cabinet shall rescind a permit condition if requested and if the applicant can demonstrate to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification.

Section 20. [Clean Unit Test for Emissions Units that are Subject to BACT or LAER. For any emissions unit that is subject to BACT or LAER and for which the cabinet has issued a major NSR permit in the past ten (10) years, an owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at a clean unit is part of a project that is a major modification.

(1) General provisions for clean units-

(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emis-

sions unit qualifies as a clean unit.

(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:

1. After the effective date of the clean unit designation as determined pursuant to subsection (3) of this section; and

2. Before the expiration date of the clean unit designation as determined pursuant to subsection (4) of this section.

(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:

1. Cause the need for a change in the emissions limitations or work practice requirements adopted in conjunction with BACT in the permit for the unit; and

2. Alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (5)(d) of this section.

(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions, if:

1. The project causes the need for a change in the emissions limitations or work practice requirements that were determined in conjunction with BACT in the permit for the unit; or

2. The project will alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (5)(d) of this section.

(e) Clean unit designation shall end immediately prior to the time actual construction begins on a project that will cause a unit to lose its clean unit designation if the owner or operator begins actual construction on a project before applying for a permit revision.

(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(4)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit is not a clean unit.

(2) Qualifying or requalifying to use the clean unit applicability test.

(a) An emissions unit shall automatically qualify as a clean unit if the unit meets the requirements in this paragraph.

1. Permitting requirement. The owner or operator of an emissions unit shall have received a major NSR permit within the past ten (10) years and shall maintain and provide information upon request by the cabinet or U.S. EPA to demonstrate that this permitting requirement is met.

2. Qualifying air pollution control technologies requirement. Air pollution emissions from the emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, that meets the following requirements:

a. The control technology shall achieve the BACT or LAER level of emissions reductions determined by issuance of a major NSR permit within the past ten (10) years;

b. The emissions unit shall not be eligible for the clean unit designation if the BACT determination did not result in a requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type; and

c. The owner or operator shall have made an investment to install the control technology. An investment shall include expenses to research the application of or to actually apply a pollution prevention technique to the emissions unit or to retrofit the unit to apply a pollution prevention technique.

(b) Requalifying for the clean unit designation. After the original clean unit designation expires or is lost, an emissions unit may requalify as a clean unit under the provisions of this paragraph or under Section 21 of this administrative regulation.

1. For an emissions unit that is requalifying for clean unit designation, an owner or operator shall obtain a new major NSR permit or permit revision, as applicable, issued pursuant to 401 KAR 52:020.

2. The permit shall require compliance with the current day BACT or LAER, and the emissions unit shall meet the requirements in subsection (3)(a) of this section.

(3) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modifica-

tion shall be determined according to paragraph (a) or (b) of this subsection, as applicable.

(a) The effective date for an original clean unit designation and for an emissions unit that requalifies as a clean unit by implementing a new control technology to meet current day BACT shall be:

1. The earlier of the date the emissions unit's air pollution control technology is placed into service or three (3) years after the date the major NSR permit or permit revision is issued; and

2. No sooner than the date that provisions for clean units become effective in the Kentucky SIP.

(b) The effective date for emissions units that requalify for the clean unit designation using an existing control technology shall be the date the new major NSR permit or permit revision is issued.

(4) Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.

(a) For an emissions unit that automatically qualifies as a clean unit under subsection (2)(a) of this section or a unit that requalifies by implementing new control technology to meet current day BACT, the expiration date of the clean unit designation shall be:

1. Ten (10) years after the effective date or ten (10) years after the date the equipment went into service, whichever is earlier; or

2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation pursuant to subsection (6) of this section.

(b) The clean unit designation for an emissions unit that requalifies for the clean unit designation using an existing control technology shall expire:

1. Ten (10) years after the effective date; or

2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (6) of this section.

(5) Required Title V permit content for a clean unit. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:

(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which this clean unit designation applies.

(b) The effective date of the clean unit designation.

1. If the exact effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and

2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the Title V permit at the first opportunity for any reason the permit is opened, but not later than the next renewal.

(c) The expiration date of the clean unit designation.

1. If the exact expiration date is not known at the date the clean unit designation is initially recorded into the Title V permit, the permit shall describe the event that shall determine the expiration date;

2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and

3. If originally absent from the Title V permit, the expiration date shall be added to the Title V permit at the first opportunity for any reason the permit is opened, but not later than the next renewal.

(d) All emissions limitations and work practice requirements adopted in conjunction with BACT and any physical or operational characteristics that formed the basis for the BACT determination.

(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (6) of this section.

(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (6) of this section.

(6) Maintaining the clean unit designation.

(a) The owner or operator of a clean unit shall conform to the provisions of this subsection to maintain the clean unit designation.

1. The clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with the BACT that are recorded in the major NSR permit or permit revision and subsequently reflected in the Title V permit;

2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT determination;

3. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation; and

4. The clean unit shall continue to control emissions using the specific air pollution control technology that is the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.

(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant shall only affect the clean unit designation for that pollutant.

(7) Netting at clean units.

(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis unless:

1. Such use occurs before the effective date of the clean unit designation, or after the clean unit designation expires; or

2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.

(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if:

1. The unit reduces emissions below the level that qualified the unit as a clean unit; and

2. The reductions are surplus, quantifiable, and permanent.

(c) For generating offsets, reductions shall also be federally enforceable.

(d) For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

(8) Effect of area redesignation on clean units.

(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.

(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements currently applicable in the area, regardless of the area's original attainment status during the previous designation period.

Section 21. Clean Unit Provisions for Emissions Units that Achieve an Emissions Limitation Comparable to BACT. For an emissions unit at a major stationary source that does not qualify as a clean unit under Section 20 of this administrative regulation but is achieving a level of emissions control comparable to BACT, the owner or operator may use the clean unit test specified in this section to determine if an emissions increase at the unit is part of a project that is a major modification.

(1) General provisions for clean units.

(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.

(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:

1. After the effective date of the clean unit designation as determined pursuant to subsection (4) of this section; and

2. Before the expiration date of the clean unit designation as determined pursuant to subsection (5) of this section.

(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:

1. Cause the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to BACT according to subsection (3) of this section; and

2. Alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT according to subsection (7)(d) of this section.

(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions, if:

1. The project causes the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to BACT, or

2. The project will alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT.

(e) Clean unit designation shall end immediately prior to the time actual construction begins on a project that will cause a unit to lose its clean unit designation, if the owner or operator begins actual construction on a project before applying for a permit revision.

(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(4)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit is not a clean unit.

(2) Qualifying or requalifying to use the clean unit applicability test:

(a) An emissions unit shall qualify as a clean unit if the unit meets the requirements in this paragraph:

1. Qualifying air pollution control technology requirement. Air pollutant emissions from an emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, and the owner or operator shall:

a. Demonstrate that an emissions unit's control technology is comparable to BACT according to the requirements of subsection (3) of this section;

b. Demonstrate that an emissions unit's control technology reduces emissions below the level of a standard, uncontrolled emissions unit of the same type; and

c. Have made an investment to install the control technology. An investment shall include expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

2. Impact of emissions from the unit requirement. The allowable emissions from the emissions unit, as determined by the cabinet, shall not:

a. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or

b. Adversely impact visibility or another air quality related value that has been identified as a federal Class I area by a federal land manager and for which information is available to the general public.

3. Date of installation requirement.

a. For control technology installed before provisions for clean units are effective in the Kentucky SIP, the owner or operator of an emissions unit with control technology on which a clean unit designation is based, shall apply for clean unit designation within two (2) years after the requirements for clean units become effective in the Kentucky SIP.

b. For control technology installed after the provisions for clean units become effective in the Kentucky SIP, the owner or operator shall apply for clean unit designation at the time the control technology is installed.

(b) Requalifying as a clean unit. An emissions unit may requalify as a clean unit after the original clean unit designation expires or is lost according to provisions in subsections (6) and (7) of this section or under clean unit provisions in Section 20 of this administrative regulation.

1. The owner or operator shall obtain a new permit or permit revision pursuant to subsections (6) and (7) of this section and 401 KAR 52.020 that demonstrates the emissions unit's control technology is achieving a level of emissions control comparable to current day BACT.

2. The emissions unit shall meet the requirements of subsections (2)(a)1 and 2 of this section.

(3) Demonstrating control effectiveness comparable to BACT. The owner or operator shall demonstrate that the emissions unit's control technology is comparable to BACT under the provisions of either paragraph (a) or (b) of this subsection.

(a) Comparison of the control technology to previous BACT and LAER determinations.

1. An emissions unit's control technology shall be presumed to be comparable to BACT if:

a. The control technology achieves an emissions limitation that is equal to or better than the average of the emissions limitation achieved by all the sources for which a BACT or LAER determination has been made within the preceding five (5) years and entered into the RACT/BACT/LAER Clearinghouse; and

b. Application of the BACT or LAER control technology to the emissions unit is technically feasible.

2. To determine the accuracy of any presumptive determination that an achieved in practice control technology is comparable to BACT, the cabinet shall:

a. Consider any information on achieved in practice pollution control technologies that is provided during the public comment period, and

b. Compare this presumption to any additional BACT or LAER determinations of which the cabinet is aware.

(b) The substantially as effective test. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT pursuant to this paragraph. The cabinet:

1. Shall consider the evidence on a case-by-case basis that an owner or operator, and any other person during the public participation process, provides to the cabinet to demonstrate if the emissions unit's control technology is substantially as effective as BACT; and

2. Shall determine if the emissions unit's air pollution control technology is substantially as effective as BACT after considering the evidence.

(c) Time of comparison.

1. Emissions units with control technologies installed before provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed before the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to:

a. The BACT requirements that applied at the time the control technology was installed; or

b. The current day BACT requirements.

2. Emissions units with control technologies installed after provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed after the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to current day BACT requirements.

(4) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be the later of:

(a) The date that the permit or permit revision required by subsection (6) of this section is issued, or

(b) The date that the emissions unit's air pollution control technology is placed into service.

(5) Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to this subsection.

(a) For an emissions unit with a clean unit designation based on a demonstration by the owner or operator that the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, the clean unit designation shall expire ten (10) years from the date the unit's control technology was installed.

(b) For all other emissions units, the clean unit designation shall expire ten (10) years from the effective date of the clean unit designation.

(e) The clean unit designation shall expire at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (8) of this section.

(6) Procedures for designating emissions units as clean units.

(a) The cabinet shall designate an emissions unit a clean unit by issuing a permit or permit revision under 401 KAR Chapter 52, including requirements for public notice of the proposed clean unit designation and opportunity for public comment, and

(b) The permit or permit revision shall meet the requirements of subsection (7) of this section.

(7) Required permit content. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:

(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which the clean unit designation applies;

(b) The effective date of clean unit designation.

1. If the effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revisions shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and

2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the Title V permit at the first opportunity the permit is opened, but not later than the next renewal;

(c) The expiration date of clean unit designation.

1. If the expiration date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the expiration date;

2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and

3. If originally absent from the Title V permit, the expiration date shall be added to the Title V permit at the first opportunity the permit is opened, but not later than the next renewal;

(d) All emissions limitations and work practice requirements adopted in conjunction with emissions limitations necessary to assure the control technology continues to achieve an emissions limitation comparable to BACT and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT;

(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (8) of this section; and

(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (8) of this section.

(8) Maintaining the clean unit designation.

(a) The owner or operator shall conform to the provisions of this subsection to maintain clean unit status.

1. To ensure that the control technology continues to achieve emissions control comparable to BACT, the clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with those that are comparable to BACT, which are recorded in the source's major NSR permit or permit revisions and subsequently reflected in the Title V permit that designates the unit as a clean unit.

2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emissions control that is comparable to BACT.

3. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation.

4. The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. The clean unit designation shall end if the

emissions unit or control technology is replaced.

(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant shall only affect the clean unit designation for that pollutant.

(9) Netting at clean units.

(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis, unless:

1. Such use occurs before the date the clean unit provisions are effective in the Kentucky SIP or after the clean unit designation expires; or

2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.

(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation, if:

1. The unit reduces emissions below the level that qualified the unit as a clean unit; and

2. The reductions are surplus, quantifiable, and permanent.

(c) For generating offsets, reductions shall also be federally enforceable.

(d) For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

(10) Effect of area redesignation on clean units.

(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.

(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements that are currently applicable in the area, regardless of the area's original attainment status during the previous designation period.

Section 22. PCP Exclusion Procedural Requirements. For a project to qualify for a pollution control project (PCP) exclusion, an owner or operator shall comply with the provisions of this section.

(1) To request a PCP designation for a project the owner or operator shall:

(a) Submit a notice to the cabinet before beginning actual construction for a project that is listed in the definition for "pollution control project" in 401 KAR 51.001, Section 1(188)(a) to (f), or

(b) Submit an application for a permit or permit revision and obtain approval to use the PCP exclusion from the cabinet according to subsection (5) of this section for a project that is not listed in the definition at 401 KAR 51.001, Section 1(188)(a) to (f).

(2) The owner or operator for all projects that rely on the PCP exclusion shall perform:

(a) An environmentally beneficial analysis.

1. The environmental benefit from the emissions reductions of pollutants regulated under 42 U.S.C. 7401 to 7671q (Clean Air Act) shall outweigh the environmental detriment of emissions increases in pollutants regulated under the Act; and

2. A statement that the project is implementing a technology from those listed in 401 KAR 51.001, Section 1(188)(a) to (f) shall satisfy the requirement in subparagraph 1 of this paragraph.

(b) An air quality analysis. The emissions increases from the project shall not:

1. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or

2. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) Content of notice or application for a permit or permit revision. The owner or operator shall include the following information in the notice or application for a permit or permit revision submitted to the cabinet for a PCP:

(a) A description of the project;

(b) The potential emissions increases and decreases of any pollutant regulated under the Act and the projected emissions increases and decreases using the methodology in Section 1(4) of this administrative regulation that will result from the project;

(c) A copy of the environmentally beneficial analysis required

by subsection (2)(a) of this section;

(d) A description of all methods, including monitoring and recordkeeping, that shall be used on an ongoing basis to demonstrate that the project is environmentally beneficial and sufficient to meet the applicable requirements of 401 KAR Chapter 52;

(e) A certification that the project shall be designed and operated in a manner that is consistent with:

1. The proper industry and engineering practices;
2. The environmentally beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;
3. The information submitted in the notice or permit application; and

4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy; and

(f) Demonstration that the PCP shall not have an adverse air quality impact.

1. The demonstration requirement may be satisfied with modeling, screening level modeling results, a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise as required by subsection (2)(b) of this section, or another method approved by the cabinet; and

2. An air quality impact analysis shall not be required for any pollutant that will not experience a significant emissions increase from the project.

(4) Notice process for listed projects—The owner or operator:

(a) May begin actual construction of a PCP project immediately after notice is sent to the cabinet for projects listed in the definition of "pollution control project" in 401 KAR 51.001, Section 1(188)(a) to (f); and

(b) Shall respond to any requests by the cabinet for additional information necessary to evaluate the suitability of the project for a PCP exclusion.

(5) Permitting process for unlisted projects.

(a) The owner or operator shall not begin actual construction of a PCP that is not listed in 401 KAR 51.001, Section 1(188)(a) to (f) until the cabinet approves and issues a permit or permit revision for the project consistent with 40 C.F.R. 51.160 and 51.161. These procedures shall include the cabinet providing the public with:

1. Notice of the proposed approval;
2. Access to the environmentally beneficial analysis and the air quality analysis; and
3. At least a thirty (30) day period for the public and the U.S. EPA to submit comments.

(b) The cabinet shall address all material comments received by the end of the comment period before taking final action on the permit or permit revision.

(6) Operational requirements—Upon installation of a PCP, the owner or operator shall comply with the requirements of this subsection.

(a) General duty. The owner or operator shall operate the PCP in a manner that is consistent with:

1. Proper industry and engineering practices;
2. The environmentally beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;
3. Information submitted in the notice or application for a permit or permit revision required by subsection (3) of this section; and
4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy.

(b) Recordkeeping to prove that the PCP is operated consistent with the general duty requirements in paragraph (a) of this subsection, the owner or operator shall maintain copies on site, of:

1. The environmentally beneficial analysis;
2. The air quality impacts analysis; and
3. The monitoring and other emissions records.

(c) Permit requirements. The owner or operator shall comply with all provisions in a permit issued under 401 KAR 52.020 related to use and approval of the PCP exclusion.

(d) Generation of emissions reduction credits.

1. Emissions reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion.

2. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if such reductions are surplus, quantifiable, and permanent;

3. For generating offsets, the reductions shall be federally enforceable; and

4. For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

**Section 23.] Plant-wide Applicability Limit Provisions** The cabinet shall only [may] approve the use of an actuals PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section.

(1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project:

1. Shall not be considered a major modification for the PAL pollutant;

2. Shall not have to be approved through Kentucky's major NSR program; and

3. Shall not be subject to the provisions of Section 16(4) of this administrative regulation concerning restrictions on relaxing enforceable emission limitations that a major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)3 of this section, a major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

(a) A list of all emissions units at the source designated as small, significant, or major, based on their potential to emit;

(b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;

(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation, including emissions associated with startup, shutdown and malfunction; and

(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source.

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall demonstrate [show] that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and

2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall demonstrate [show] that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that:

1. Meets the public participation requirements in subsection (4) of this section; and

2. Contains all the requirements of subsection (6) of this section; [i]

(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;

(d) Each PAL shall regulate emissions of only one (1) pollutant.;

(e) Each PAL shall have a PAL effective period of ten (10) years.;

(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period.;

(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:

1. The level of the PAL is reduced by the amount of the emissions reductions; and

2. The reductions will be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100. The cabinet shall

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and

(b) Address all material comments before taking final action on a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51.001, Section 1(224) or under 42 U.S.C. 7401-7671q [the Act], whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shut down after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(f) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;

(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;

(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions;

(e) A requirement that, once the PAL expires, the major stationary source shall be subject to the requirements of subsection (8) of this section;

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;

(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;

(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format [or other general-

ly] [another] [acceptable format approved by the cabinet];

(i) A requirement for the owner or operator to submit the reports required under subsection (13) of this section by the required deadlines; and

(j) Any [Other] requirements necessary to implement and enforce the PAL.

(7) PAL effective period and reopening of a PAL permit.

(a) A PAL effective period shall be ten (10) years.

(b) The cabinet shall reopen a PAL permit to:

1. Correct typographical or calculation errors made in setting the PAL;

2. Reflect a more accurate determination of emissions used to establish the PAL;

3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or

4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.

(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any other requirement that is enforceable as a practical matter and imposed on the major stationary source under the SIP; and

3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:

a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.

(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period, and the requirements of this subsection shall then apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitations under a revised permit established as follows:

1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.

b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.

2. The cabinet shall decide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.

3. The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate

(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS if the alternate monitoring system demonstrates [to demonstrate] compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.



(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 16(4) of this administrative regulation.

(9) Renewal of a PAL

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.

2. The deadline for application submittal shall ensure that the permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;

2. A proposed PAL level;

3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL if the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is equal to or greater than eighty (80) percent of the current PAL level, unless the sum is greater than the source's potential to emit.

3. If the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is less than eighty (80) percent of the current PAL level, the cabinet may set the PAL at a different level if the level [that] is determined to be:

a. More representative of the source's baseline actual emissions; or

b. Appropriate considering the following factors:

(i) Air quality needs;

(ii) Advances in control technology;

(iii) Anticipated economic growth in the area of the source;

(iv) The cabinet's goal of promoting voluntary emissions reductions;

(v) Cost effective emissions control alternatives; and

(vi) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted in conjunction with [at the time of] PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and

2. The cabinet has not already adjusted for the [such] requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL emissions limitation during the PAL effective period if the major stationary source complies with the

provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a PAL major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include:

1. Identification of the emissions units contributing to the increase in emissions that cause the source's emissions to equal or exceed its PAL;

2. Demonstration that the increased PAL, as calculated in paragraph (c) of this subsection, exceeds the PAL; and

a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis with the application submittal [at the time the application is submitted], unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years;

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained; and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plant-wide emissions of the PAL pollutant in terms of mass per unit of time;

2. A monitoring system authorized for use in the PAL permit shall be:

a. Approved by the cabinet pursuant to this subsection; and

b. Based on sound science and meet generally acceptable scientific procedures for data quality and manipulation;

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coatings or solvents;

2. CEMS;

3. CPMS or PEMS; and

4. Emission factors.

(c) Mass balance calculations. An owner or operator using



mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant [that is] contained in or created by all materials used in or at the emissions unit;

2. If the PAL pollutant cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable performance specifications found in 40 C.F.R. Part 60, Appendix B; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval if approved by the cabinet.

(f) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

3. ~~The [if technically practicable, the] owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance if the cabinet determines that the testing is required and technically practicable, unless the cabinet determines that testing is not required.~~

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements of paragraphs (c) to (g) of this subsection, in conjunction with [at the time of] permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points; or

2. Determine that operation of the emissions unit during operating conditions if [when] there is not a [no] correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means ~~if [scientifically valid means]~~ approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determina-

tion of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR 52:020, 52:030, and 52:040 [Chapter 62] that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit number;

2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action following a deviation;

6. A notification of permanent or temporary shutdown of any monitoring system including:

a. The reason for the shutdown;

b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g) of this section that is included in the permit; and

7. A signed statement by the responsible official, as defined by 401 KAR 51.001, Section 1(210) [52:004], certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable.

1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(iii)(B) shall satisfy the deviation reporting requirement;

2. The deviation report shall be submitted within the time limits prescribed by 40 C.F.R. 70.6(a)(3)(iii)(B);

3. The deviation report shall contain the following information:

a. The identification of the owner, the operator, and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official, as defined by 401 KAR 51.001, Section 1(210) [52:004], certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published in 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established before August 10, 2006 [the date the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published in 67 Fed.

Reg. 80186, December 31, 2002.] with a different PAL if the new PAL [that] complies with the requirements of this administrative regulation [section.

**Section 24. Incorporation by Reference**—(1) The following material is incorporated by reference:

(a) "40 C.F.R. Part 51, Appendix W to Part 51—Guideline on Air Quality Models, as published in the Code of Federal Regulations, July 1, 2003".

(b) "40 C.F.R. Part 58, Appendix B to Part 58—Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring, as published in the Code of Federal Regulations, July 1, 2003".

(c) "40 C.F.R. Part 60, Appendix B to Part 60—Performance Specifications, as published in the Code of Federal Regulations, July 1, 2003".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Weston Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304;

(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 899-8468; and

(i) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358.

(3) Copies of the Code of Federal Regulations and the Federal Register may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Attn: New Orders, P.O. Box 371854, Pittsburgh, Pennsylvania 15250-7954, phone (202) 512-1800, fax (202) 512-2250.]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at noon

CONTACT PERSON: Laura Lund, Environmental Technologist II, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, ext. 4428, fax (502) 564-4666, and email Laura\_Lund@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund, Environmental Technologist II

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation provides for the prevention of significant deterioration (PSD) of ambient air quality, and applies to major stationary sources and major modifications constructing in areas designated as either attainment or unclassified.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to continue to receive full delegation of authority for the federal PSD program in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.10-100(26) mandates the preservation of clean air resources while ensuring economic growth. This regulation conforms to the statutes because it is no more stringent than the federal mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is no more stringent than the federal mandate,

codified in 40 C.F.R. 51.166.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment revises the list of exempted major stationary sources codified in 40 C.F.R. Part 51, and the list of major sources codified in 40 C.F.R. Part 70, as they relate to PSD, NSR, and Title V applicability. The amendment removes the existing standards and requirements for clean units (CU) and pollution control projects (PCP) that have been vacated at the federal level in a D.C. Court of Appeals decision. This amendment requires major sources emitting more than 100 tons per year of nitrogen oxides (NOx) to conduct an ambient air quality analysis for ozone. Amendments in formatting and grammar were also necessary in order to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: These regulatory revisions are necessary in order to implement changes in the Kentucky State Implementation Plan (SIP) in response to changes in the federal rules and to provide the applicable sources with the appropriate regulatory mechanism to submit an ozone air quality analysis.

(c) How the amendment conforms to the content of the authorizing statutes: Kentucky's federally-approved PSD SIP provides the permitting and enforcement authority delegated from the U.S. EPA to the Commonwealth. How the amendment will assist in the effective administration of statutes: This administrative regulation amendment is modeled after the federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The amendment revises the applicability of major sources by specifically excluding "chemical process plants" that produce ethanol through a natural fermentation process. In addition, sources meeting standards and requirements for CU and PCP, and sources emitting more than 100 tons per year of NOx, are affected by this administrative regulation.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities shall continue to comply with this administrative regulation. This regulation includes an amendment that affects existing or proposed facilities that produce ethanol through a natural fermentation process as it specifically excludes them, under the component term "chemical process plants," from having to comply with the PSD/NSR requirements. Sources will no longer be required to meet standards and requirements for CU and PCP. In addition, major sources emitting more than 100 tons per year of NOx will be required to conduct an ambient air quality analysis for ozone.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ethanol facilities, as defined in C.F.R. 51.166 and this administrative regulation, are no longer included under the 100 tons per year PTE limit for major source categories under the PSD/NSR rules. As a result of not having to apply additional emission controls, growth of the ethanol industry will increase.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The applicability and compliance requirements that are tiered in this administrative regulation are modeled after the federal PSD and NSR rules.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 7401-7671q provides the statutory mandate codified in 40 C.F.R. Part 51.166, as amended in 72 Fed. Reg. 24077, May 1, 2007, and in 72 Fed. Reg. 32528, June 13, 2007.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. The federal PSD mandate requires sources described in Section 1 of this administrative regulation to demonstrate that any construction or modification will not cause emissions to increase by specific incremental amounts; that the source's emissions will not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS); and that the source will use best available control technology (BACT) to control emissions. The amendment to this administrative regulation excludes "chemical process plants" that produce ethanol by a natural fermentation process in the revised definition of major stationary source. Further revisions include the removal of clean unit (CU) and pollution control project (PCP) requirements because they have been vacated at the federal level by a decision from the D.C. Court of Appeals. This amendment requires major sources emitting more than 100 tons per year of nitrogen oxides (NOx) to conduct an ambient air quality analysis for ozone.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is modeled after the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division for Air Quality will continue to implement and enforce the Prevention of Significant Deterioration (PSD) program in the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 42 U.S.C. 7401-7671q.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The cabinet's existing operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amended After Comments)

401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

RELATES TO: KRS 224.20-100(5), 224.20-110, 224.20-120, 40 C.F.R. Part 51 Appendix S, Part 51 Subpart 1, 51.165, 51.166, 51.300, 51.307, 52.21, 60, 61, 70.6, Subpart 1, 51.465, 51.466[(g)], 62.21, [62.21(+)] [60, 61, 81, Subpart D, 81.318, 42 U.S.C. 7401-7671q, EO 2009-538 [7401-7626, 7407(d)(1)(A)(i), (ii), and (iii), 7410]

STATUTORY AUTHORITY: KRS 224.10-100(5), [40-C.F.R. 51.165,] 42 U.S.C. 7401-7671q, EO 2009-538 [(Clean Air Act)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 ~~authorizes the~~ [requires the Environmental and Public Protection] cabinet to promulgate administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation establishes requirements for the construction or modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained. The provisions of this administrative regulation are neither different nor more stringent than the federal regulation 40 C.F.R. 51.165

Section 1. Applicability. This administrative regulation shall apply to the construction of a new major stationary source or a [any] project that is a major modification at an existing major stationary source, which commences construction after September 22, 1982, and locates in or impacts upon an area designated non-attainment under 42 U.S.C. 7407(d)(1)(A)(i)

(1) The provisions of this administrative regulation relating to visibility protection shall also apply to major sources or major modifications in nonattainment areas that potentially have an impact on visibility in a mandatory Class I federal area.

(2) Applicability tests for projects. Except as provided in sub-section (3) [subsections (3) or (4)] of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase, as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed or modified according to subparagraphs 1 to 3[4] of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. ~~[Emissions test for projects that involve clean units. For a project that will be constructed and operated at a clean unit as provided in Sections 11 and 12 of this administrative regulation, without causing the unit to lose its clean unit designation, an emissions increase shall not be deemed to occur.]~~

4.] Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR

pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using the methods specified in subparagraphs 1 and 2 [to 3] of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable test in paragraph (a) of this subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1(144) and (218)(146).

(3) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 11 [44] of this administrative regulation. ~~[(4) An owner or operator undertaking a pollution control project (PCP) shall comply with Section 13 of this administrative regulation.]~~

Section 2. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance.

(a) The cabinet shall examine each proposed major new source and proposed major modification to determine if the source or modification will meet all applicable emissions requirements in the Kentucky State Implementation Plan (SIP) and 40 C.F.R. Parts 60 and 61.

(b) If the cabinet determines from the application and all other available information that the proposed source or modification will not meet the applicable emissions requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact.

(a) The cabinet shall determine if a proposed major stationary source or major modification will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major.

(b) If a designated nonattainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source will not cause a new violation.

(3) Fugitive emissions sources. Sections 4 and 10 of this administrative regulation shall not apply to a source or modification that will be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to one (1) of the following categories:

- (a) Coal cleaning plants with thermal dryers;
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants, furnace process;
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140;
- (u) Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
- (aa) Another stationary source category ~~that~~<sup>which</sup>, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

Section 3. Sources Locating in Designated Attainment or Unclassifiable Areas that Will Cause or Contribute to a Violation of a National Ambient Air Quality Standard. (1) This section shall apply only to new major stationary sources or new major modifications that will locate in designated attainment or unclassifiable areas, pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii), if the source or modification will cause impacts that exceed the significance levels, as listed in the table in this subsection, at a locality that does not or will not meet the national ambient air quality standards.

Pollutant	Annual Average	Averaging Time			
		24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 ug /m <sup>3</sup>	5 ug /m <sup>3</sup>	--	25 ug /m <sup>3</sup>	--
PM <sub>10</sub>	1.0 ug /m <sup>3</sup>	5 ug /m <sup>3</sup>	--	--	--
Nitrogen Dioxide	1.0 ug /m <sup>3</sup>	--	--	--	--
Carbon Monoxide	--	--	0.5 mg/m <sup>3</sup>	--	2 mg/m <sup>3</sup>

(2) Sources to which this section applies shall meet the requirements in Section 4(1), (2) and (4) of this administrative regulation and may be exempt from Section 4(3) of this administrative regulation.

(3) For sources of sulfur dioxide (SO<sub>2</sub>), particulate matter, and carbon monoxide (CO), the determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model listed in 40 C.F.R. Part 51, Appendix W, "Guideline on Air Quality Models".

(4) For sources of NO<sub>x</sub>, the initial determination that a new major source or major modification will cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide (NO<sub>2</sub>) shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO<sub>2</sub> by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOCs or NO<sub>x</sub> locating outside a designated ozone nonattainment area shall be presumed to not have a [ne] significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, the source shall be permitted pursuant to ~~[under the applicable provisions of]~~ this administrative regulation and 401 KAR 52:020 until the area is designated nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(6) The determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas, the operation of which will cause a new violation of a national ambient air quality standard but will not contribute to an existing violation, may be approved only if the following conditions are met:

- (a) The new source shall:
  - 1. Meet an emissions limitation;
  - 2. Meet a design, operational, or equipment standard, or
  - 3. Control existing sources so that the new source will not cause a violation of a national ambient air quality standard.

(b) The new emissions limitations for the new and existing sources affected shall be state and federally enforceable in accordance with Section 6 of this administrative regulation.

Section 4. Sources Locating in a Designated Nonattainment Area. This section shall apply to a new major stationary source or major modification that will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major. Approval to construct may be granted only if the conditions of this section are met.

(1) The new major source or major modification shall be required to meet an emissions limitation that specifies the lowest achievable emissions rate (LAER) for the source.

(2) The applicant shall demonstrate that all existing major sources owned or operated by the applicant, or an entity controlling, controlled by, or under common control with the applicant, in the Commonwealth of Kentucky are in compliance with all applicable emissions limitations and standards specified in Title 401, Chapters 50 to 65[63], and 40 C.F.R. Parts 60 and 61 and 42 U.S.C. 7401-7626, or are in compliance with an expeditious state and federally enforceable compliance schedule or a court decree establishing a compliance schedule.

(3)(a) Except for VOCs or NOx emissions, emissions from existing sources in the affected area of the proposed new major source or modification, whether or not under the same ownership, shall be reduced[;] or offset, so that there will be reasonable further progress toward attainment of the applicable national ambient air quality standard (NAAQS). Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(b) The ratio of total emissions reductions of VOCs or NOx to total increased emissions of the same air pollutant shall be at least the ratio indicated for the following ozone nonattainment area classifications:

1. For marginal nonattainment areas, at least 1.1 to 1;
2. For moderate nonattainment areas, at least 1.15 to 1;
3. For serious nonattainment areas, at least 1.2 to 1;
4. For severe nonattainment areas, at least 1.3 to 1; and
5. For extreme nonattainment areas, at least 1.5 to 1.

(4) The emissions reductions shall provide a positive net air quality benefit in the affected area.

(a) Atmospheric simulation modeling shall not be required for VOCs and NOx.

(b) Except as provided in Section 3(5) of this administrative regulation, compliance with subsection (3) of this section and Section 5(3)(e) of this administrative regulation shall be adequate to meet this condition.

(5) The proposed major stationary source or major modification shall include in the application for a construction permit an analysis of the alternative sites, sizes, production processes, and environmental control techniques for the proposed source, which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 5. Determining Credit for Emissions Offsets. (1) The baseline for determining credit for emissions reductions or offsets shall be where baseline actual emissions as defined in 401 KAR 51:001, Section 1(20), shall not be used for determining the baseline for emissions offsets:

(a) The emissions limitations in effect when [at-the-time] the application to construct or modify a source is filed; or

(b) The actual emissions of the source from which offset credit is attained if:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards for the SIP was based on actual emissions; or

2. The SIP does not contain an emissions limitation for that source or source category [(e) Baseline actual emissions as defined in 401 KAR 51:001, Section 1(20), shall not be used for determining the baseline for emissions offsets.]

(2) Credit for emissions offsets. Credit for emissions offset purposes may be allowed for existing control if the existing con-

trol[that] goes beyond the control required under 401 KAR Chapters 50 to 65 and applicable [68-and-existing] federal regulations.

(3) General provisions for calculating offset values.

(a) Offset calculations shall be made on a pound-per-hour basis if all facilities involved in the emissions offset calculations are operating at their maximum or allowed production rate.

(b) Offsets may be calculated on a tons-per-year basis if baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period.

(c) If the cabinet requires certain hardware controls instead of an emissions limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(d) If the emissions limitations required by the cabinet allow greater emissions than the uncontrolled emissions rate of the source, emissions offset credit shall be allowed only for control below the uncontrolled emissions rate.

(e) The owner or operator of a new or modified major stationary source shall comply with any offset requirement in effect under this administrative regulation to increase emissions of an air pollutant by:

1. Obtaining emissions reductions of the air pollutant from the same source or other sources in the same nonattainment area; or
2. From sources in another nonattainment area if:

a. The other area has an equal or higher nonattainment classification than the area in which the source is located; and

b. Emissions from the other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

(4) Calculating offsets if an [no] applicable emissions limitation does not exist [exists]. If the Kentucky SIP does not contain an emissions limitation for a source or source category, the emissions offset baseline involving the source shall be actual emissions determined under actual operating conditions for the previous two (2) year period.

(5) Calculating offsets for existing fuel combustion sources.

(a) The emissions for determining emissions offset credit involving an existing fuel combustion source shall be the allowable emissions under the emissions limitation requirements of the cabinet for the type of fuel being burned when [at-the-time] the new major source or major modification application is filed.

(b) If the existing source has switched to a different type of fuel at some earlier date, a resulting emissions reduction, either actual or allowable, shall not be used for emissions offset credit.

(c) If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable emissions for the fuels involved shall not be allowed unless the permit is conditioned to require the use of a specified alternative control measure that will achieve the same degree of emissions reduction if the source switches back to a dirtier fuel at some later date.

(6) Calculating offsets for operating hours and source shutdowns.

(a) A source may be credited with emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if the work force to be affected has been notified in writing of the proposed shutdown or curtailment.

(b) Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emissions offset credit.

(c) If an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for the [such] shutdown or curtailment may be applied to offset emissions from the new source.

(7) Calculating offsets for hydrocarbon substitution. An emissions offset credit shall be allowed for replacing one volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane, or trichlorofluoroethane.

(8) Banking of emissions offset credit.

(a) New sources obtaining permits by applying offsets after the effective date of this administrative regulation may bank offsets that exceed the requirements of Section 5(3) of this administrative regulation.

(b) An owner or operator of an existing source that reduces its own emissions may bank a resulting reduction beyond those required by regulation for use under this administrative regulation, even if the offsets are applied immediately to a new source permit.

(c) Banked emissions offsets may be used under the preconstruction review program required in 42 U.S.C. 7401 to 7626, as long as these banked emissions are identified and accounted for in Kentucky's control strategy.

(9) Offset credit for meeting NSPS or NESHAPS.

(a) If a source is subject to an emissions limitation established in a New Source Performance Standard (NSPS) or a National Emissions Standard for Hazardous Air Pollutants (NESHAPS) and a different emissions limitation is required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emissions offsets.

(b) The difference in emissions between NSPS or NESHAPS and other emissions limitations ~~shall~~may not be used as offset credit.

Section 6. Administrative Procedures for Emissions Offsets. (1) Emission reductions shall be enforceable by the cabinet and the U.S. EPA, and shall be accomplished by the start-up date of the new source.

(a) If emissions reductions are to be obtained in a state that neighbors the Commonwealth for a new source to be located in the Commonwealth, the emissions reductions shall be enforceable by the neighboring state or local agencies and the U.S. EPA.

(b) The necessary emissions offsets may be proposed by the owner of the proposed source or by the cabinet.

(2) Source initiated emissions offsets.

(a) The owner or operator of a source may propose:

1. Internal emissions offsets, which involve reductions from sources controlled by the owner; or

2. External emissions offsets, which involve reductions from other sources, if the emissions offsets meet the requirements of this section and Section 4(3) of this administrative regulation.

(b) An internal emissions offset shall be included and made enforceable as a condition of the source's permit.

(c) An external emissions offset shall only be accepted if the cabinet requires the affected source to comply with a new emissions limitation to ensure that its emissions shall be reduced by a specified amount in a specified time; and the new emissions limitation shall be enforceable by the cabinet and the U.S. EPA.

(3) Cabinet initiated emissions offsets.

(a) The cabinet may commit to reducing emissions from mobile sources and other existing sources to provide a net air quality benefit in the impact area of a proposed new source to accommodate the proposed new source.

(b) This emissions reduction commitment shall be reflected in the emissions limitation requirements for the new and existing sources as required by this section.

Section 7. Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52.020 or under the terms of an approval to construct.

(2)(a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval;

2. Is discontinued for a period of eighteen (18) months or more; or

3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory demonstrating ~~showing~~ that an extension is justified.

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction

project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with applicable provisions of 401 KAR Chapters 50 to 65 and other applicable ~~[63 and any other]~~ requirements under local, state, or federal law.

(4) If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, the requirements of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5)(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a clean unit or at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator uses the method specified in 401 KAR 51.001, Section 1(199)(b)(202)(b) to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions units for which emissions of a regulated NSR pollutant may be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

a. Baseline actual emissions;

b. Projected actual emissions;

c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and

d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by an emissions unit identified in paragraph (a)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for:

a. Five (5) years following resumption of regular operations after the change; or

b. Ten (10) years if the project increases the design capacity of or potential to emit for that regulated NSR pollutant at the emissions unit.

(d) If the unit is an existing EUSGU, before beginning actual construction, the owner or operator:

1. Shall provide a copy of the information in paragraph (b) of this subsection to the cabinet; and

2. Shall not be required to obtain a determination from the cabinet before beginning actual construction; and

3. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that contains the unit's annual emissions during the calendar year preceding report submittal.

(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceed the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant, and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted to the cabinet within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall



contain the following:

- a. The name, address, and telephone number of the major stationary source;
- b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and
- c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 8. Permit Condition Rescission. (1) An owner or operator holding a permit for a stationary source or modification ~~that~~ <sup>which</sup> was issued pursuant to 401 KAR 51:050 or 401 KAR 51.051E may request that the cabinet rescind the applicable conditions.

(2) The cabinet shall rescind a permit condition if the owner or operator:

(a) Requests and ~~requested and the applicant~~ demonstrates to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification if construction will have commenced after September 22, 1982; and

(b) Demonstrates ~~if the owner or operator demonstrates~~ that the rescission will not violate the requirements of Sections 4(3) and 7 of this administrative regulation.

Section 9. Class I Areas. (1) The following areas, which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

- (a) International parks;
  - (b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and
  - (c) National parks that exceed 6,000 acres in size.
- (2) Any other area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources that may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lake-shore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 10. Protection of Visibility. (1) New source review; applicability and exemptions.

(a) A stationary source or modification to which this section applies shall not begin actual construction without a permit that states the stationary source or modification shall meet the requirements of this section.

(b) This section shall apply to construction of a new major stationary source or major modification that will be constructed in an area designated as nonattainment under 42 U.S.C. 7407(d)(1)(A)(i) and potentially have an impact on visibility in a Class I area.

(c) This section shall apply to a major stationary source or major modification for each pollutant subject to regulation under 42 U.S.C. 7401 to 7626 that it will emit, except as provided in paragraphs (d) and (e) of this subsection.

(d) This section shall not apply to a particular major stationary source or major modification if:

1. The source or modification is a nonprofit health or nonprofit educational institution; or a major modification will occur at the institution, and the Governor of the Commonwealth requests that it be exempt from the requirements of this section; and

2. The source is a portable stationary source that has previously received a permit under this section and will be temporarily relocated; and

(e) The emissions from the source will not exceed the allowable emissions;

b. The emissions from the source will not impact a Class I area or an area where an applicable increment is known to be violated; and

c. Reasonable notice is given to the cabinet prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. The notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet pursuant to this section.

(e) This section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

- 1. Will not impact a Class I area;
- 2. Will not impact an area where an applicable increment is known to be violated; and
- 3. Will be temporary.

(2) Visibility impact analyses. The owner or operator of a source shall provide an analysis of the impairment to visibility that will occur in a Class I area as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification.

(3) Federal land manager notification.

(a) The federal land manager and the federal official charged with direct responsibility for management of Class I areas shall have an affirmative responsibility to protect the visibility and other air quality related values of the Class I lands and to consider, in consultation with the cabinet, if a proposed source or modification will have an adverse impact on these values.

(b) The cabinet shall provide written notification to all affected federal land managers and to the federal official charged with direct responsibility for management of lands within the Class I area of a permit application or an advanced notice of a permit application for a proposed new major stationary source or major modification that may affect visibility in a Class I area. The notification shall:

1. Include a copy of all information relevant to the permit application;

2. Be submitted pursuant to this paragraph ~~(b) of this subsection~~ within thirty (30) days of receipt of the permit application or advanced notice of permit application and at least sixty (60) days prior to a public hearing on the application for a permit to construct; and

3. Include an analysis of the proposed source's anticipated impacts on visibility in a Class I area.

(c) 1. The cabinet shall consider an analysis by the federal land manager, provided within thirty (30) days of the notification and analysis required by paragraph (b) of this subsection, that the proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

2. If the cabinet finds that the analysis does not demonstrate, to the satisfaction of the cabinet, that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public hearing notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation can be obtained.

(d) Adverse impact on visibility as it applies to paragraph (c) of this subsection shall be determined on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and time of natural conditions that reduce visibility.

(4) Public participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100 in processing applications under this section ~~and the cabinet~~ shall follow the procedures at 40 C.F.R. 52.21(r), effective ~~as in effect on~~ July 1, 2009[2003], to the extent that the procedures of 401 KAR 52:100 do not apply.

(5) National visibility goal.

(a) The cabinet shall only issue permits to those sources for which emissions will be consistent with making reasonable progress toward the national goal of preventing future, and remedying existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.



(b) In making the decision to issue a permit, the cabinet shall consider [may take into account the overriding factors of]:

1. The costs [cost] of compliance;
2. The time necessary for compliance;
3. The energy and nonair quality environmental impacts of compliance; and
4. The useful life of the source.

(6) Monitoring.

(a) The cabinet may require monitoring of visibility in a Class I area near the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA.

(b) The monitoring method selected shall be determined on a case-by-case basis by the cabinet.

(c) The cabinet shall not undertake visibility monitoring in a Class I area without the approval of the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the federal land manager, and the U.S. EPA, upon request.

**Section 11. [Clean Unit Test for Emissions Units that are Subject to LAER.]** For any emissions unit that is subject to LAER and for which the cabinet has issued a major NSR permit in the past ten (10) years, an owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at a clean unit is part of a project that is a major modification.

(1) General provisions for clean units.

(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.

(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:

1. After the effective date of the clean unit designation as determined according to subsection (3) of this section; and
2. Before the expiration date of the clean unit designation as determined according to subsection (4) of this section.

(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:

1. Cause the need for a change in the emissions limitations or work practice requirements adopted in conjunction with LAER in the permit for the unit; and
2. Alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (5)(d) of this section.

(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revision if:

1. The project causes the need for a change in the emissions limitations or work practice requirements that were determined in conjunction with LAER in the permit for the unit; or
2. The project will alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (5)(d) of this section.

(e) Clean unit designation shall end immediately before the time actual construction begins on a project that will cause a unit to lose its clean unit designation if the owner or operator begins actual construction on a project before applying for a permit revision.

(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(2)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit is not a clean unit.

(g)1. For emissions units with PSD permits, the BACT level of emissions reductions or work practice requirements shall satisfy the requirement for meeting LAER in subsections (3) to (8) of this section if:

- a. The emissions unit has received a PSD permit that complies with BACT within the last ten (10) years; and
- b. The emissions unit is located in an area that was redesignated as nonattainment for the relevant pollutant after the PSD permit is issued and before the SIP including the clean unit provisions become effective.

sions become effective.

2. For these emissions units, the requirements for the LAER determination made under subsection (1)(c) of this section shall apply to the BACT permit terms and conditions.

3. The requirements of subsection (6)(a)3 of this section shall not apply to emissions units that qualify for clean unit status according to this paragraph.

(2) Qualifying or requalifying to use the clean unit applicability test.

(a) An emissions unit shall automatically qualify as a clean unit if the unit meets the requirements in this paragraph.

1. Permitting requirement. The owner or operator of an emissions unit shall have received a major NSR permit within the past ten (10) years and shall maintain and provide information upon request by the cabinet or U.S. EPA to demonstrate that this permitting requirement is met.

2. Qualifying air pollution control technologies requirement. Air pollutant emissions from the emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, that meets the following requirements:

a. The control technology shall achieve the LAER level of emissions reductions determined by issuance of a major NSR permit within the past ten (10) years;

b. The emissions unit shall not be eligible for the clean unit designation if the LAER determination did not result in a requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type; and

c. The owner or operator shall have made an investment to install the control technology. An investment includes expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(b) Requalifying for the clean unit designation. After the original clean unit designation expires or is lost, an emissions unit may requalify as a clean unit under the provisions of this paragraph or under Section 12 of this administrative regulation.

1. An owner or operator shall obtain a new major NSR permit or permit revision, as applicable, issued pursuant to 401 KAR 52:020 for an emissions unit that is requalifying for clean unit designation.

2. The permit shall require compliance with the current day LAER, and the emissions unit shall meet the requirements in subsection (3)(a) of this section.

(3) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.

(a) The effective date for an original clean unit designation and for an emissions unit that requalifies as a clean unit by implementing a new control technology to meet current day LAER shall be:

1. The earlier of the date the emissions unit's air pollution control technology is placed into service or three (3) years after the date the major NSR permit or permit revision is issued; and

2. No sooner than the date that provisions for clean units become effective in the Kentucky SIP.

(b) The effective date for emissions units that requalify for the clean unit designation using an existing control technology shall be the date the new major NSR permit or permit revision is issued.

(4) Clean unit expiration. The date that the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.

(a) For an emissions unit that automatically qualifies as a clean unit under subsection (2)(a) of this section or a unit that requalifies by implementing new control technology to meet current day LAER, the expiration date of the clean unit designation shall be:

1. Ten (10) years after the effective date or ten (10) years after the date the equipment went into service, whichever is earlier; or

2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation pursuant to subsection (6) of this section.

(b) The clean unit designation for an emissions unit that requalifies for the clean unit designation using an existing control technology shall expire:

1. Ten (10) years after the effective date; or

2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (6) of this section.

(5) Required Title V permit content for a clean unit. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:

(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which this clean unit designation applies.

(b) The effective date of the clean unit designation.

1. If the exact effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and

2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.

(c) The expiration date of the clean unit designation.

1. If the exact expiration date is not known at the date the clean unit designation is initially recorded in the Title V permit, the permit shall describe the event that shall determine the expiration date;

2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and

3. If originally absent for the Title V permit, the expiration date shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.

(d) All emissions limitations and work practice requirements adopted in conjunction with LAER and any physical or operational characteristics that formed the basis for the LAER determination.

(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (6) of this section.

(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (6) of this section.

(6) Maintaining the clean unit designation.

(a) The owner or operator of a clean unit shall conform to the provisions of this subsection to maintain the clean unit designation.

1. The clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with the LAER that are recorded in the major NSR permit and subsequently reflected in the Title V permit;

2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination;

3. The clean unit shall not emit above a level that has been offset.

4. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation; and

5. The clean unit shall continue to control emissions using the specific air pollution control technology that is the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.

(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant shall only affect the clean unit designation for that pollutant.

(7) Offsets and netting at clean units.

(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis or for generating offsets, unless:

1. Such use occurs before the effective date of the clean unit designation, or after the clean unit designation expires; or

2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.

(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation, if:

1. The unit reduces emissions below the level that qualified the unit as a clean unit; and

2. The reductions are surplus, quantifiable, and permanent.

(c) For generating offsets, reductions shall be federally enforceable.

(d) For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

(8) Effect of area redesignation on clean units.

(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.

(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements currently applicable in the area, regardless of the area's original attainment status during the previous designation period.

Section 12. Clean Unit Provisions for Emissions Units that Achieve an Emissions Limitation Comparable to LAER. For an emissions unit that does not qualify as a clean unit under Section 11 of this administrative regulation but is achieving a level of emissions control comparable to LAER, the owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at the unit is part of a project that is a major modification.

(1) General provisions for clean units.

(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.

(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:

1. After the effective date of the clean unit designation as determined pursuant to subsection (4) of this section; and

2. Before the expiration date of the clean unit designation as determined pursuant to subsection (5) of this section.

(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:

1. Cause the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to LAER according to subsection (3) of this section; and

2. Alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER according to subsection (7)(d) of this section.

(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revision, if:

1. The project causes the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to LAER; or

2. The project will alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER.

(e) Clean unit designation shall end immediately before the time actual construction begins on a project that will cause a unit to lose its clean unit designation, if the owner or operator begins actual construction on a project before applying for a permit revision.

(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(2)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit were never a clean unit.

(2) Qualifying or requalifying to use the clean unit applicability test.

(a) An emissions unit shall qualify as a clean unit if the unit meets the requirements of this paragraph.

1. Qualifying air pollution control technology requirement. Air pollutant emissions from an emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, and the owner or operator shall:

a. Demonstrate that an emissions unit's control technology is comparable to LAER according to the requirements of subsection (3) of this section;

b. Demonstrate that an emissions unit's control technology reduces emissions below the level of a standard, uncontrolled emissions unit of the same type; and

c. Have made an investment to install the control technology. An investment shall include expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

2. Impact of emissions from the unit requirement. The allowable emissions from the emissions unit, as determined by the cabinet, shall not:

a. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or

b. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

3. Date of installation requirement.

a. For control technology installed before provisions for clean units are effective in the Kentucky SIP, the owner or operator of an emissions unit with control technology on which clean unit designation is based, shall apply for clean unit designation within two (2) years after the requirements for clean units become effective in the Kentucky SIP.

b. For control technology installed after the provisions for clean units become effective in the Kentucky SIP, the owner or operator shall apply for clean unit designation at the time the control technology is installed.

(b) Requalifying as a clean unit. An emissions unit may requalify as a clean unit after the original clean unit designation expires or is lost according to provisions in subsections (6) and (7) of this section or under clean unit provisions in Section 11 of this administrative regulation.

1. The owner or operator shall obtain a new permit or permit revision pursuant to subsections (6) and (7) of this section and 401 KAR 52.020 that demonstrates the emissions unit's control technology is achieving a level of emissions control comparable to current day LAER.

2. The emissions unit shall meet the requirements in subsection (2)(a)1 and 2 of this section.

(3) Demonstrating control effectiveness comparable to LAER. The owner or operator shall demonstrate that the emissions unit's control technology is comparable to LAER under the provisions of either paragraph (a) or (b) of this subsection.

(a) Comparison of the control technology to previous LAER determinations.

1. An emissions unit's control technology shall be presumed to be comparable to LAER if the control technology achieves an emissions limitation that is at least as stringent as one of the five best performing similar sources for which a LAER determination has been made within the preceding five (5) years and for which information has been entered into the RACT/BACT/LAER clearinghouse.

2. To determine the accuracy of any presumptive determination that an achieved-in-practice control technology is comparable to LAER, the cabinet shall:

a. Consider any information on achieved-in-practice pollution control technologies that is provided during the public comment period; and

b. Compare this presumption to any additional LAER determinations of which the cabinet is aware.

(b) The substantially as effective test. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as LAER according to this paragraph. The cabinet:

1. Shall consider the evidence on a case-by-case basis that an owner or operator, and any other person during the public participation process, provides to the cabinet to demonstrate if the emissions unit's control technology is substantially as effective as LAER; and

2. Shall determine if the emissions unit's air pollution control technology is substantially as effective as LAER after considering the evidence.

(c) Time of comparison.

1. Emissions units with control technologies installed before provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed before the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to:

a. The LAER requirements that applied at the time the control technology was installed; or

b. The current day LAER requirements.

2. Emissions units with control technologies installed after provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed after the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to current day LAER requirements.

(4) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be the later of:

(a) The date that the permit or permit revision required by subsection (6) of this section is issued; or

(b) The date that the emissions unit's air pollution control technology is placed into service.

(5) Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to this subsection.

(a) For an emissions unit with a clean unit designation based on a demonstration by the owner or operator that the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, the clean unit designation shall expire ten (10) years from the date the unit's control technology was installed.

(b) For all other emissions units, the clean unit designation shall expire ten (10) years from the effective date of the clean unit designation.

(c) The clean unit designation shall expire at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (8) of this section.

(6) Procedures for designating emissions units as clean units.

(a) The cabinet shall designate an emissions unit a clean unit by issuing a permit or permit revision under 401 KAR Chapter 52, including requirements for public notice of the proposed clean unit designation and opportunity for public comment; and

(b) The permit or permit revision shall meet the requirements of subsection (7) of this section.

(7) Required permit content. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:

(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which the clean unit designation applies.

(b) The effective date of clean unit designation.

1. If the effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revisions shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and

2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the source's Title V permit at the

first opportunity the permit is opened, but not later than the next renewal.

(c) The expiration date of clean unit designation.

1. If the expiration date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the expiration date;

2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date, and

3. If originally absent from the Title V permit, the expiration date shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.

(d) All emissions limitations and work practice requirements adopted in conjunction with emissions limitations necessary to assure the control technology continues to achieve an emissions limitation comparable to LAER and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER.

(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (8) of this section.

(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, according to subsection (8) of this section.

(g) Maintaining the clean unit designation.

(a) The owner or operator shall conform to the provisions of this subsection to maintain clean unit status.

1. To ensure that the control technology continues to achieve emissions control comparable to LAER, the clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with those that are comparable to LAER, which are recorded in the source's major NSR permit or permit revisions and subsequently reflected in the Title V permit that designates the unit as a clean unit.

2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emissions control that is comparable to LAER.

3. The clean unit shall not emit above a level that has been effect.

4. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation.

5. The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.

(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one pollutant shall only affect the clean unit designation for that pollutant.

(g) Offsets and netting at clean units.

(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis or for offsets, unless:

1. Such use occurs before the date the clean unit provisions are effective in the Kentucky SIP or after the clean unit designation expires; or

2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.

(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation, if:

1. The unit reduces emissions below the level that qualified the unit as a clean unit, and

2. The reductions are surplus, quantifiable, and permanent.

(c) For generating offsets, reductions shall be federally enforceable.

(d) For determining creditable net emissions increases and decreases, the reductions shall be enforceable as a practical matter.

(10) Effect of area redesignation on clean units.

(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.

(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements that are currently applicable in the area, regardless of the area's original attainment status during the previous designation period.

**Section 13. PCP Exclusion Procedural Requirements.** For a project to qualify for a PCP exclusion, an owner or operator shall comply with the provisions of this section.

(1) To request a PCP designation for a project the owner or operator shall:

(a) Submit a notice to the cabinet before beginning actual construction for a project that is listed in the definition for "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); or

(b) Submit an application for a permit or permit revision and obtain approval to use the PCP exclusion from the cabinet according to subsection (5) of this section for a project that is not listed in 401 KAR 51:001, Section 1(188)(a) to (f).

(2) The owner or operator for all projects that rely on the PCP exclusion shall perform:

(a) An environmentally beneficial analysis.

1. The environmental benefit from the emissions reductions of pollutants regulated under 42 U.S.C. 7401 to 7671q (Clean Air Act) shall outweigh the environmental detriment of emissions increases in pollutants regulated under the Act; and

2. A statement that the project is implementing a technology from those listed in 401 KAR 51:001, Section 1(188)(a) to (f) shall satisfy the requirement in subparagraph 1 of this paragraph.

(b) Air quality analysis. The emissions increases from the project shall not:

1. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or

2. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) Content of notice or application for a permit or permit revision. The owner or operator shall include the following information in the notice or application for a permit or permit revision submitted to the cabinet for a PCP:

(a) A description of the project;

(b) The potential emissions increases and decreases of any pollutant regulated under the Act and the projected emissions increases and decreases that will result from the project;

(c) A copy of the environmentally beneficial analysis required by subsection (2)(a) of this section;

(d) A description of all methods, including monitoring and recordkeeping, that shall be used on an ongoing basis to demonstrate that the project is environmentally beneficial and sufficient to meet the applicable requirements of 401 KAR Chapter 52;

(e) A certification that the project shall be designed and operated in a manner that is consistent with:

1. The proper industry and engineering practices;

2. The environmentally beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;

3. The information submitted in the notice or permit application; and

4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy.

(f) Demonstration that the PCP shall not have an adverse air quality impact.

1. The demonstration requirement may be satisfied with modeling, screening level modeling results, a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise as required by subsection (2)(b) of this section, or another method approved by the cabinet.

2. An air quality impact analysis shall not be required for any pollutant that will not experience a significant emissions increase from the project.

(4) Notice process for listed projects. The owner or operator:

(a) May begin actual construction of a PCP project immediately after notice is sent to the cabinet for projects listed in the definition of "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); and

(b) Shall respond to any requests by the cabinet for additional information necessary to evaluate the suitability of the project for a PCP exclusion.

(5) Permitting process for unlisted projects.

(a) The owner or operator shall not begin actual construction of a PCP that is not listed in 401 KAR 51:001, Section 1(188)(a) to (f) until the cabinet approves and issues a permit or permit revision for the project according to 401 KAR 52:020. These procedures shall include the cabinet providing the public with:

1. Notice of the proposed approval;
2. Access to the environmentally beneficial analysis and the air quality analysis; and
3. At least a thirty (30) day period for the public and the U.S. EPA to submit comments.

(b) The cabinet shall address all material comments received by the end of the comment period before taking final action on the permit or permit revision.

(c) Operational requirements. Upon installation of the PCP, the owner or operator shall comply with the requirements of this subsection.

(a) General duty. The owner or operator shall operate the PCP in a manner that is consistent with:

1. Proper industry and engineering practices;
2. The environmentally beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;
3. Information submitted in the notice or application for a permit or permit revision required by subsection (3) of this section; and
4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy.

(b) Recordkeeping. To prove that the PCP is operated consistent with the general duty requirements in paragraph (a) of this subsection, the owner or operator shall maintain copies on site of:

1. The environmentally beneficial analysis;
2. The air quality impacts analysis; and
3. The monitoring and other emissions records.

(c) Permit requirements. The owner or operator shall comply with all provisions in a permit issued under 401 KAR 52:020 related to use and approval of the PCP exclusion.

(d) Generation of emissions reduction credits.

1. Emissions reductions created by a PCP shall not be included in calculating a significant net emissions increase or for generating offsets, unless the emissions unit further reduces emissions after qualifying for the PCP exclusion.

2. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if such reductions are surplus, quantifiable, and permanent.

3. For generating offsets, the reductions shall also be federally enforceable.

4. For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

**Section 14.] Plant-wide Applicability Limit Provisions.** The cabinet may approve the use of an actuals PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section.

(1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project:

1. Shall not be considered a major modification for the PAL pollutant;
2. Shall not have to be approved through Kentucky's major NSR program; and
3. Shall not be subject to the provisions of Section 7(4) of this administrative regulation concerning restrictions on relaxing enforceable emissions limitations that the major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)3 of this section, the major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

(c) The cabinet shall not allow a PAL for VOC or NOx for any major stationary source located in an extreme ozone nonattainment area.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

(a) A list of all emissions units at the source designated as small, significant or major, based on their potential to emit;

(b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;

(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation; and

(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source, in which [where]:

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall demonstrate [show] that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and

2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall demonstrate [show] that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL;

(b) The PAL shall be established in a PAL permit that:

1. Meets the public participation requirements in subsection (4) of this section; and

2. Contains all the requirements of subsection (6) of this section;

(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;

(d) Each PAL shall regulate emissions of only one (1) pollutant;

(e) Each PAL shall have a PAL effective period of ten (10) years;

(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period; and

(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:

1. The level of the PAL is reduced by the amount of the [such] emissions reductions; and

2. The reductions would be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100 for issuing permits or permit revisions. The cabinet shall:

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and

(b) Address all material comments before taking final action on

a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section 1[(224)] or under 42 U.S.C. 7401-7671q[the Act], whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shut down after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(f) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;

(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;

(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions;

(e) A requirement that, once the PAL expires, the major stationary source shall be subject to the requirements of subsection (8) of this section;

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;

(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;

(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format ~~[or another acceptable format approved by the cabinet]~~;

(i) A requirement for the owner or operator to submit, by the reports required under subsection (13) of this section by the required deadlines; and

(j) Any other requirements necessary to implement and enforce the PAL.

(7) PAL effective period and reopening of a PAL permit.

(a) A PAL effective period shall be ten (10) years.

(b) The cabinet shall reopen a PAL permit to:

1. Correct typographical or calculation errors made in setting the PAL;

2. Reflect a more accurate determination of emissions used to establish the PAL;

3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or

4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.

(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any other requirement:

a. That is enforceable as a practical matter; and

b. That may be imposed on the major stationary source under the SIP; and

3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:

a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.

(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period and the requirements of this subsection shall then apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitation under a revised permit established as follows:

1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.

b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.

2. The cabinet shall provide~~decide~~ the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.

3. The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.

(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS if the alternate monitoring system demonstrates~~to demonstrate~~ compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 7(4) of this administrative regulation.

(9) Renewal of a PAL.

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.

2. The deadline for application submittal shall ensure that the



permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;
2. A proposed PAL level;
3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and
4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward to a level ~~not~~ greater than the potential to emit if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL without considering the factors specified in subparagraph 3 of this section, if the emissions level calculated according to subsection (5) of this section is equal to or greater than eighty (80) percent of the PAL level, or

3. The cabinet may set the PAL at a level that is determined to be:

- a. More representative of the source's baseline actual emissions; or
- b. Appropriate considering the following factors:
  - (i) Air quality needs;
  - (ii) Advances in control technology;
  - (iii) Anticipated economic growth in the area of the source;
  - (iv) The cabinet's goal of promoting voluntary emissions reductions; or
  - (v) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted ~~in conjunction with the~~ [at the time of] PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and

2. The cabinet has not already adjusted for ~~the~~ [such] requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL emissions limitation during the PAL effective period if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a PAL major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include:

1. Identification of the emissions units contributing to the increase in emissions for the PAL major modification;
2. Demonstration that increased PAL, as calculated in paragraph (c) of this subsection exceeds the PAL, and:
  - a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis ~~when~~ [at the time] the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years.

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

cation.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained, and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plant-wide emissions of the PAL pollutant in terms of mass per unit of time.

2. A monitoring system authorized for use in the PAL permit shall be:

- a. Approved by the cabinet pursuant to this subsection; and
- b. Based on sound science and meet generally-acceptable scientific procedures for data quality and manipulation;

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches.

1. Mass balance calculations for activities using coatings or solvents;

2. CEMS;

3. CPMS or PEMS; and

4. Emissions factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant ~~[that is]~~ contained in or created by all materials used in or at the emissions unit;

2. If it cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable Performance Specifications found in 40 C.F.R. Part 60, Appendix A[1]; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored



parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the cabinet.

(f) Emissions factors. An owner or operator using emissions factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emissions factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2. The emissions unit shall operate within the designated range of use for the emissions factor, if applicable; and

3. ~~The [if technically practicable, the] owner or operator of a significant emissions unit that relies on an emissions factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emissions factor within six (6) months of PAL permit issuance. If the cabinet determines that the testing is required and technically practicable, unless the cabinet determines that testing is not required].~~

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during ~~the [such]~~ periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements in paragraphs (c) to (g) of this subsection, in conjunction with ~~[at the time of]~~ permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points if a correlation cannot be demonstrated; or

2. If there is not a [re] correlation between monitored parameters and the PAL pollutant emissions, determine that operation of the emissions unit during operating conditions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify the compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR Chapter 52 that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit number;

2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action following a deviation;

6. A notification of permanent or temporary shutdown of any monitoring system including:

a. The reason for the shutdown;

b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g) of this section that is included in the permit; and

7. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210) [52-004], certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable.

1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(iii)(B) shall satisfy this deviation reporting requirement;

2. The deviation report shall be submitted within the time limits prescribed by the applicable program implementing 40 C.F.R. 70.6(a)(3)(iii)(B);

3. The deviation report shall contain the following information:

a. The identification of the owner, the operator, and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210) [52-004], certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published at 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established before August 10, 2006 ~~[the date the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published at 67 Fed. Reg. 80186, December 31, 2002]~~, with a PAL that complies with the requirements of this administrative regulation ~~[section]~~.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at noon

CONTACT PERSON: Laura Lund, Environmental Technologist II, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, ext. 4428, fax (502) 564-4666, and email Laura\_Lund@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund, Environmental Technologist II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for the nonattainment new source review (NSR) and applies to new construction or modification of major stationary sources in areas designated nonattainment for a specified pollutant.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to continue to receive full delegation of authority for the federal NSR program in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the Cabinet to promulgate administrative regulations for the prevention, abate-

ment, and control of air pollution. KRS 224.10-100(26) mandates the preservation of clean air resources while ensuring economic growth. This regulation conforms to the statutes because it is no more stringent than the federal mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is no more stringent than the federal mandate, codified in 40 C.F.R. 51.165.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment revises the list of exempted major stationary sources codified in 40 C.F.R. Part 51, and the list of major sources codified in 40 C.F.R. Part 70, as they relate to PSD, NSR, and Title V applicability. The amendment removes the existing standards and requirements for clean units (CU) and pollution control projects (PCP) that have been vacated at the federal level in a D.C. Court of Appeals decision. This amendment includes nitrogen oxides (NOx) as a precursor for ozone. Amendments in formatting and grammar were also necessary in order to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: These regulatory revisions are necessary in order to implement changes in the Kentucky State Implementation Plan (SIP) in response to changes in the federal rules.

(c) How the amendment conforms to the content of the authorizing statutes: Kentucky's federally-approved NSR SIP provides the permitting and enforcement authority delegated from the U.S. EPA to the Commonwealth. How the amendment will assist in the effective administration of statutes: This administrative regulation amendment is modeled after the federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The amendment revises the applicability of major sources by specifically excluding "chemical process plants" that produce ethanol through a natural fermentation process. In addition, sources meeting standards and requirements for CU and PCP, and sources emitting NOx in an area designated as nonattainment for ozone, are affected by this administrative regulation.

(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities shall continue to comply with this administrative regulation. This amendment affects existing or proposed facilities that produce ethanol through a natural fermentation process as it specifically excludes them, under the component term "chemical process plants," from having to comply with the PSD/NSR requirements. Sources will no longer be required to meet standards and requirements for CU and PCP. In addition, sources emitting NOx in an area designated as nonattainment for ozone will be subject to permitting as volatile organic compounds have been.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs involved in compliance with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ethanol facilities, as defined in C.F.R. 51.166 and this administrative regulation are no longer included under the 100 tons per year PTE limit for major source categories under the PSD/NSR rules. As a result of not having to apply additional emission controls, growth of the ethanol industry will increase.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this regulation.

(b) On a continuing basis: There will not be any additional continuing costs for the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The

Cabinet's current operating budget will be used for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This regulation does not establish, nor does it directly or indirectly increase any fees.

(9) TIERING. Is tiering applied? Yes. The applicability and compliance requirements that are tiered in this administrative regulation are modeled after the federal PSD and NSR rules.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 7401-7671q; 42 U.S.C. 7401-7626, 7407(d)(1)(A)(i), (ii), and (iii), 7410, provides the statutory mandate codified in 40 C.F.R. Part 52.21, as amended in 72 Fed. Reg. 24077, May 1, 2007, and in 72 Fed. Reg. 32528, June 13, 2007.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. The federal NSR mandate requires sources described in Section 1 of this administrative regulation to demonstrate that any construction or modification of the source will not cause a net increase in pollution; neither will the source create a delay in attainment of the NAAQS; and that the source will install and use control technology that achieves the lowest achievable emissions rate (LAER). The amendment to this administrative regulation excludes "chemical process plants" that produce ethanol by a natural fermentation process in the revised definition of major stationary source. Further revisions include the removal of clean unit (CU) and pollution control project (PCP) requirements because they have been vacated at the federal level by a decision from the D.C. Court of Appeals. This amendment requires sources emitting NOx in an area designated as nonattainment for ozone to be subject to permitting as volatile organic compounds have been.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation is modeled after federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division for Air Quality will continue to implement and enforce the New Source Review (NSR) program in the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 42 U.S.C. 7401-7671q.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Cabinet's existing operating budget continues as the

source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Medical Management**  
**(Amended After Comments)**

**907 KAR 1:715. School-based health services.**

RELATES TO: KRS 156.070, 205.520, 605.115, 314.470, 20 U.S.C. 33, 34 C.F.R. 300.320, 300.321, 300.324[20 U.S.C. 33]  
 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medicaid services to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to school-based health services (SBHS) for which payment shall be made by the Medicaid Program on behalf of Medicaid recipients who are eligible for school-based health services under 20 U.S.C. Chapter 33 [the Individuals with Disabilities Education Act (20 U.S.C. 33)].

Section 1. Definitions. (1) "Admissions and release committee" or "ARC" means a group of individuals which meets the:

(a) ARC requirements established in 707 KAR 1:320; and

(b) IEP team requirements established in 34 C.F.R. 300.321

(2) "Advanced registered nurse practitioner" is defined by KRS 314.011(7).

(3) [required by 707 KAR 1:320 and 34 C.F.R. 300.344, who are responsible for developing, reviewing, and, as necessary, revising the individualized education program for a child with a disability.

(2) "Assistive technology device" means an item, piece of equipment, or product system that is:

(a) Used to increase, maintain, or improve the functional capabilities of a child with a disability; and

(b) Medically necessary to implement the health services in the child's individualized education program.

(4) "Certified psychologist" means an individual who holds the title of certified psychologist pursuant to KRS 319.056.

(5) "Certified psychologist with autonomous functioning" means an individual who holds the title of certified psychologist with autonomous functioning pursuant to KRS 319.056.

(6) "Certified social worker" means an individual with a certified social worker license pursuant to KRS 335.080.

(7) [(3) "Collateral services" means instruction and consultation to a child, the child's family, teacher, or another service provider which is necessary to communicate and enhance the effectiveness of the child's treatment and management programs.

(4) "Department of Education" means the Commonwealth of Kentucky, Department of Education.

(8) [(5)] "IDEA" means the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33.

(9) "IEP team" is defined by 34 C.F.R. 300.321.

(10) [(6)] "Incidental interpreter services" means the[these] interpreter services that are necessary to allow the child to benefit from other covered school-based health services.

(11) [(7)] "Individualized Education Program" or "IEP" is defined by 34 C.F.R. 300.320.

(12) "Licensed clinical social worker" means an individual possessing a current licensed clinical social worker license pursuant to KRS 335.100.

(13) "Licensed practical nurse" is defined by KRS 314.011(9).

(14) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(15) "Licensed professional clinical counselor associate" is defined by KRS 335.500(4).

(16) "Licensed psychological associate" means an individual holding the title of licensed psychological associate pursuant to KRS 319.064.

(17) "Licensed psychological practitioner" means an individual who meets the licensed psychological practitioner requirements established in KRS 319.053.

(18) "Licensed psychologist" means a psychologist who holds a licensed psychologist license pursuant to KRS 319.010(5).

(19) "Licensed social worker" means an individual possessing a current licensed social worker license pursuant to KRS 335.090.

(20) "Occupational therapist" is defined by KRS 319A.030(3).

(21) "Occupational therapy assistant" is defined by KRS 319A.030(4).

(22) "Physical therapist" is defined by KRS 327.010(2).

(23) "Physical therapist [therapy] assistant" means an individual:

(a) With a current credential [license] from the Kentucky Board of Physical Therapy; and

(b) Working under the supervision of a physical therapist.

(24) "Psychologist" is defined by KRS 319.010(8).

(25) "Recipient" is defined by KRS 205.8451(9).

(26) "Registered nurse" is defined by KRS 314.011(5).

(27) "Respiratory care practitioner" is defined by KRS 314A.010(3).

(28) [means a written plan for a child with a disability that is developed, reviewed and revised in accordance with 707 KAR 1:320.

(8) "Recipient" means a Medicaid-eligible child under the age of twenty-one (21), including the entire month in which the child becomes twenty-one (21).

(9) "School-based health services" or "SBHS" means medical-ly-necessary health services;

(a) Provided for in 907 KAR 1:034; and

(b) [as] Specified in an individualized education program for a child determined to be eligible under the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33, and 707 KAR Chapter 1.

(29) "SBHS recipient" means a recipient who:

(a) Is under the age of twenty-one (21) years; and

(b) Receives school-based health services.

(30) [(40)] "Special transportation" means a special arrangement, special equipment, or a special vehicle which is;

(a) Appropriate for the child's disability; and

(b) The need for which is described in the child's individualized education plan.

Section 2. Provider Requirements. (1) A school district that requests to participate as a school-based health care provider shall not be qualified to provide school-based health services:

(a) Until it has enrolled as a Medicaid provider pursuant to 907 KAR 1:672;

(b) Until it has been certified by the Department of Education to provide school-based health services; and

(c) Unless it is currently compliant with the Medicaid provider participation requirements established in 907 KAR 1:671 [be-certified by the Department of Education].

(2) The Department of Education shall grant certification to a district that agrees to:

(a) Provide services as;

1. Required by 20 U.S.C. Chapter 33,; and

2. Specified in an approved individualized education program developed by an ARC that includes a multidisciplinary team of professionals acting within their scope of practice;

(b) Comply with the service provision requirements mandated by 20 U.S.C. Chapter 33 and in accordance with [requirements for provision of services required by IDEA as outlined in] 707 KAR

1:320;

(c) Employ or contract with health care professionals who meet the qualifications specified in Section 4 of this administrative regulation;

(d) Provide the Department of Education with a proposed quality assurance outline;

(e) Maintain and submit to the Department of Education all required records and reports to ensure compliance with 20 U.S.C. Chapter 33; and

(f) Provide the Department of Education with a list of school-based health services that the school district provides. This list shall contain the following information for employees and contractors providing the services:

1. Name;
2. Credentials;
3. Hourly salary;
4. Hourly fringe benefit costs; and
5. Hourly contract amounts.

(3) The Department for Medicaid services shall grant Medicaid enrollment to a provider who:

(a) Meets the criteria established in subsections (1) and (2) of this section;

(b) Works within his or her scope of practice as established in Kentucky law; and

(c) [in subsection (2) of this section; and

(b)] is recommended by the Department of Education for certification and enrollment in the Kentucky Medicaid Program as a provider of school-based health services.

(4) A Medicaid school-based health services provider shall:

(a) Submit to an annual review by the Department of Education to ensure compliance with the standards for continued participation as a Medicaid provider;

(b) Have an on-site survey completed by the Department of Education as necessary to determine compliance with the Medicaid Program;

(c) Take action as specified by the Department of Education to correct a deficiency if found to be in noncompliance with the provision of services outlined in 707 KAR 1:320 or this administrative regulation;

(d) Agree to implement a quality assurance program approved by the Department of Education for the provision of Medicaid-covered services within one (1) year from the date the Department of Education recommends enrollment to the Medicaid Program;

(e) Maintain a current list of school-based health services that the school district provides. The list shall contain the information listed in subsection (2)(f) of this section for an employee or contractor providing the services; and

(f) Maintain records on each SBHS [Medicaid-eligible] recipient who receives services reimbursed by Medicaid. ~~The[These]~~ records shall:

1. Identify the child, services performed, and quantity or units of service;
  2. Be signed and dated by the professional who provided or supervised the service;
  3. Be legible with statements written in an objective manner;
  4. Indicate progress being made, any change in treatment, and response to the treatment; and
  5. Be retained [maintained] for a minimum of five (5) years plus any additional time required by law; and
- (g) Comply with 907 KAR 1:671 and 1:672.

Section 3. Covered Services. (1) A school-based health service that is included in an [authorized] IEP authorized by an IEP team or ARC and provided in accordance with this administrative regulation shall:

(a) Be considered medically necessary; and

(b) ~~[shall]~~ Not be subject to additional Medicaid prior-authorization requirements.

(2) The following services shall be covered if provided to address a medical or mental disability and to assist an [the] individual in benefiting from special education programming which is included, authorized, and provided in accordance with the individualized education program:

- (a) Nursing;
- (b) Audiology;
- (c) Speech and language;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) Mental health;
- (g) Incidental interpreter services provided in conjunction with another covered service;

(h) Orientation and mobility services;

(i) Respiratory therapy;

(j) Assistive technology devices and appropriate related evaluations if the devices purchased by the Medicaid Program become the property of the SBHS recipient; and

(k) Special transportation with the following limitations:

1. A special transportation service shall be limited to transporting an SBHS [a] recipient to receive a Medicaid-covered service at:

- a. A site other than the school building in which the child is enrolled for general education purposes;
- b. The child's home if the child is a home-bound student and receives general education services at home; or

c. The school building where the child receives the Medicaid-covered service. Special transportation to the school building from the child's home or other site and return special transportation from the school building to the child's home or other site shall be covered for the day the Medicaid-covered service is provided at the school building;

2. A special transportation service shall be provided using a type of vehicle which:

- a. Meets the specifications established by KRS 156.153, 702 KAR 5:060, and 702 KAR 5:130; and
- b. Is appropriate for the child's disability as determined by the ARC in accordance with 702 KAR 5:100; and

3. A special transportation service provided by a member of an SBHS recipient's household to the SBHS recipient shall not be covered unless the SBHS recipient's household member is [shall not be covered for special transportation provided by a member of the recipient's household if that person is not] an employee of the school district.

(3) A covered school-based health service:

(a) Shall not be limited by site of service;

(b) Shall be provided in:

1. A group of no more than six (6); or
  2. In a one-on-one situation; and
- (c) May include:

1. An assessment or evaluation if the assessment or evaluation is stated in the SBHS recipient's IEP, except as allowed in subsection (4) of this section; or

2. A treatment component if the treatment component is stated in the SBHS recipient's IEP [assessment, evaluation, treatment, and collateral components].

(4) An assessment or evaluation conducted prior to the establishment of an individualized education program shall be covered if the individualized education program is subsequently developed and implemented as a result of the assessment or evaluation.

Section 4. Staffing Requirements. School-based health services shall be reimbursable if provided by a professional acting within his or her scope of practice as defined by state law and as provided in this section.

(1) A nursing service shall be provided by:

(a) An advanced registered nurse practitioner with a current license from the Kentucky Board of Nursing;

(b) A registered nurse;

1. With a current license from the Kentucky Board of Nursing;

or

2. Authorized to provide a nursing service;

(c) A licensed practical nurse;

1. With a current license issued by the Kentucky Board of Nursing, under appropriate supervision and delegated authority; or

2. Authorized to provide a nursing service pursuant to KRS 314.470; or

(d) A health aide if:

1. The aide is under the supervision of a specific registered nurse or advanced registered nurse practitioner;

2. The supervising registered nurse or advanced registered nurse practitioner has trained the aide for the specific SBHS nursing service for the specific recipient; and

3. The supervising registered nurse or advanced registered nurse practitioner has verified in writing that the aide has appropriate training and skills to perform the specific service in a safe, effective manner.

(2) Audiology services shall be provided by an audiologist with a current license from the Kentucky Board of Speech-Language Pathology and Audiology.

(3) Speech and language services shall be provided by:

(a) A speech-language pathologist who [with]:

1. Has a current license from the Kentucky Board of Speech-Language Pathology and Audiology; [or]

2. Has a master's level professional [a-master-level] certification issued by the Kentucky Education Professional Standards Board after January 1, 2001; or

3. Has a certificate of clinical competence issued by the American Speech-Language-Hearing Association; or

4. Is working under the supervision of an individual who:

a. Has a current license from the Kentucky Board of Speech-Language Pathology and Audiology;

b. Has a master's level professional certification issued by the Kentucky Education Professional Standards Board after January 1, 2001; or

c. Has a certificate of clinical competence issued by the American Speech-Language-Hearing Association; or

(b) A speech-language pathology assistant who:

1. Has:

a. A current license from the Kentucky Board of Speech-Language Pathology and Audiology; or

b. A baccalaureate-level certification issued by the Kentucky Educational Professional Standards Board; and

2. Is under the supervision of a licensed or certified masters-level speech-language pathologist in accordance with KRS 334A.033, 334A.080 and 161.053.

(4) Occupational therapy services shall be provided by:

(a) An occupational therapist;

(b) An occupational therapy assistant [with a current license from the Kentucky Board of Licensure for Occupational Therapy;

(b) An occupational therapy assistant who is:

1. Licensed by the Kentucky Board of Licensure for Occupational Therapy to assist in the practice of occupational therapy; and

2. Under the supervision of an occupational therapist; or

(c) An unlicensed occupational therapy aide who:

1. Provides supportive services to occupational therapists and occupational therapy assistants; and

2. Is under the direct supervision of a licensed occupational therapist.

(5) Physical therapy services shall be provided by:

(a) A physical therapist [with a current license from the State Board of Physical Therapy];

(b) A physical therapist assistant [with a current license from the State Board of Physical Therapy under the supervision of a licensed physical therapist];

(c) An individual with a temporary permit to perform physical therapy in Kentucky pursuant to 327.010(5) [A physical therapist with a temporary permit issued by the State Board of Physical Therapy under the supervision of a licensed physical therapist];

(d) A student of physical therapy under the supervision of a [licensed] physical therapist; or

(e) Physical therapy supportive personnel [A physical therapy aide] under the direct on-site supervision of a:

1. [Licensed] Physical therapist; or

2. [Licensed] Physical therapist assistant in accordance with the provisions of 201 KAR 22:053.

(6) A mental health service shall be provided by:

(a) A licensed psychologist;

(b) A licensed psychological practitioner;

(c) A certified psychologist with autonomous functioning;

(d) A certified psychologist;

(e) A licensed psychological associate;

(f) A licensed clinical social worker;

(g) A licensed social worker;

(h) A certified social worker;

(i) An advanced registered nurse practitioner who has a specialty area in accordance with the American Nurses' Association's Scope and Standards of Psychiatric Mental Health Nursing Practice in accordance with 201 KAR 20:057;

(j) A licensed professional clinical counselor; or

(k) A licensed professional clinical counselor associate.

(7) An incidental interpreter service shall be provided by an interpreter licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing pursuant to KRS 309.301. [Mental health services shall be provided by:

(a) An individual currently licensed by the Kentucky Board of Examiners of Psychology in accordance with KRS Chapter 319 as a:

1. Licensed psychologist;

2. Licensed psychological practitioner;

3. Certified psychologist with autonomous functioning;

4. Certified psychologist; or

5. Licensed psychological associate;

(b) A school psychologist currently certified by the Kentucky Education Professional Standards Board;

(c) A school social worker currently certified by the Kentucky Education Professional Standards Board;

(d) A licensed clinical social worker currently licensed by the Kentucky Board of Social Work;

(e) A licensed social worker currently licensed by the Kentucky Board of Social Work;

(f) A certified social worker currently licensed by the Kentucky Board of Social Work;

(g) A guidance counselor currently certified by the Kentucky Education Professional Standards Board;

(h) A psychometrist currently certified by the Kentucky Education Professional Standards Board;

(i) An advanced registered nurse practitioner who has a specialty area in accordance with the American Nurses' Association's Scope and Standards of Psychiatric Mental Health Nursing Practice in accordance with 201 KAR 20:057;

(j) A licensed professional clinical counselor as defined in KRS Chapter 335; or

(k) A licensed professional counselor associate as defined in KRS Chapter 335.

(7) In order to provide an incidental interpreter service, an interpreter shall be licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing as required by KRS 309.300 to 309.319.]

(8) Orientation and mobility services shall be provided by an orientation and mobility specialist certified by the:

(a) Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP); or

(b) National Blindness Professional Certification Board (NBPCB).

(9) Respiratory therapy services shall be provided by a respiratory care practitioner [certified by the Kentucky Board of Respiratory Care as required by KRS 314A.010-314A.]

Section 5. Reimbursement. (1) Reimbursement for SBHS shall be provided in accordance with the school-based health service reimbursement provisions established in 907 KAR 1:035 [Section 5].

(2) A school-based health services provider shall certify the expenditure of state or local funds for school-based health services in accordance with 702 KAR 3:285.

Section 6. Individualized Education Program. An IEP shall:

(1) Be developed, reviewed, and revised in accordance with:

(a) 707 KAR 1:320; and

(b) 34 C.F.R. 300.324; and

(2) Not be considered authorized unless it has been approved by an IEP team [providers shall certify expenditure of state or local funds to provide covered school-based health services to Medicaid-eligible children as specified in 702 KAR 3:285].

ELIZABETH A. JOHNSON, Commissioner  
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 12, 2009  
 FILED WITH LRC: November 13, 2009 at 9 a.m.  
 CONTACT PERSON: Jill Brown, Office of Legal Services, 275  
 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502)  
 564-7905, fax (502) 564-7573.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lee Barnard (502) 564-9444 or Stuart Owen (502) 564-4321

## (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes school-based health service provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish school-based health service provisions in concert with 20 U.S.C. Chapter 33.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing school-based health service provisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing school-based health service provisions.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment authorizes school-based health services to be performed not only by a licensed practical nurse (LPN) or registered nurse (RN) with a Kentucky Board of Nursing-issued license but by an out-of-state LPN or RN authorized to provide nursing services to Kentucky residents in accordance with the Nurse Licensure Compact enacted by KRS 314.470 in 2007. Additionally, the amendment deletes collateral services from being reimbursable as mandated by the Centers for Medicare and Medicaid Services (CMS) via an audit; and contains language and formatting revisions to comply with KRS 13A language and formatting requirements. The amendment after comments contains technical corrections (physical therapist assistant rather than physical therapy assistant, credential rather than license, and supportive personnel rather than aide.)

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to render this administrative regulation compliant with the Nurse Licensure Compact enacted by KRS 314.470 and to comply with a CMS mandate. The amendment after comments is necessary to correct certain terms.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 314.470 by authorizing out-of-state LPN's and RN's to provide nursing services to Kentucky residents. Deleting collateral services from being a Medicaid-reimbursable service complies with the Centers for Medicare and Medicaid Services (CMS) "Review of Kentucky's Medicaid Covered Services Provided in Schools and Medicaid School-Based Administrative Claiming Program" issued January 25, 2008. The amendment after comments conforms to the authorizing statutes by utilizing correct terms.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 314.470 by authorizing out-of-state LPN's and RN's to provide nursing services to Kentucky residents. Deleting collateral services from being a Medicaid-reimbursable service complies with the Centers for Medicare and Medicaid Services (CMS) "Review of Kentucky's Medicaid Covered Services Provided in Schools and Medicaid School-Based Administrative Claiming Program" issued January 25, 2008. The amendment after comments will assist in the effective administration of the authorizing statutes by utilizing correct terms.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Any out-of-state LPN or RN who is authorized to perform nursing services to Kentucky residents in accordance with KRS 314.470 is potentially affected by the amendment as well as any school-based health service provider who previously provided collateral services as they are no longer Medicaid-reimbursable.

Currently, border states Tennessee and Virginia participate in the Nurse Licensure Compact and Missouri recently passed legislation to join the Compact.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. An out-of-state LPN or RN who is authorized to provide nursing services to Kentucky residents pursuant to KRS 314.470 would automatically be authorized to provide such services. A school-based health service provider who previously provided collateral services will need to cease providing such service if they expect to be reimbursed by the Medicaid program for such service.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment imposes no cost on the regulated entities or individuals unless a school-based health service provider provides collateral services and expects, wrongly so, to be reimbursed by the Medicaid program for the service.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Out-of-state LPN's or RN's who are authorized to provide nursing services to Kentucky Medicaid recipients pursuant to KRS 314.470 will benefit from this amendment by being able to serve Kentucky Medicaid recipients and be reimbursed for such services by the Department for Medicaid Services (DMS).

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The number of out-of-state LPN's or RN's who may choose to serve Kentucky Medicaid recipients and, thus, be reimbursed by DMS as a result of this amendment is indeterminable. Currently, border states Tennessee and Virginia participate in the Nurse Licensure Compact and Missouri recently passed legislation to join the Compact. Regarding collateral services, which are no longer reimbursable per CMS, DMS spent \$295,361.01 in state fiscal year 2007 on collateral services and \$292,389.18 on collateral services in state fiscal year 2008. Thus, DMS will not experience such expenditures in future fiscal years.

(b) On a continuing basis: The number of out-of-state LPN's or RN's who may choose to serve Kentucky Medicaid recipients and, thus, be reimbursed by DMS as a result of this amendment is indeterminable. Currently, border states Tennessee and Virginia participate in the Nurse Licensure Compact and Missouri recently passed legislation to join the Compact. Regarding collateral services, which are no longer reimbursable per CMS, DMS spent \$295,361.01 in state fiscal year 2007 on collateral services and \$292,389.18 on collateral services in state fiscal year 2008. Thus, DMS will not experience such expenditures in future fiscal years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement the amendment to the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.

(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation because it is applicable equally to all individuals or entities regulated by it.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Centers for Medicare and Medicaid Services (CMS)

issued a "Review of Kentucky's Medicaid Covered Services Provided in Schools and Medicaid School-Based Administrative Claiming Program" on January 25, 2008 requiring the Department for Medicaid Services to immediately cease claiming federal financial participation (federal funding) for collateral services.

2. State compliance standards. KRS 314.470 authorizes out-of-state LPN's or RN's to serve Kentucky residents.

3. Minimum or uniform standards contained in the federal mandate. The Centers for Medicare and Medicaid Services (CMS) issued a "Review of Kentucky's Medicaid Covered Services Provided in Schools and Medicaid School-Based Administrative Claiming Program" on January 25, 2008 requiring the Department for Medicaid Services to immediately cease claiming federal financial participation (federal funding) for collateral services.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter than federal requirements.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be impacted by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.470.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates no increase in revenue as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no increase in revenue as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? The number of out-of-state LPN's or RN's who may choose to serve Kentucky Medicaid recipients and, thus, be reimbursed by DMS as a result of this amendment is indeterminable. Currently, border states Tennessee and Virginia participate in the Nurse Licensure Compact and Missouri recently passed legislation to join the Compact. Regarding collateral services, which are no longer reimbursable per CMS, DMS spent \$295,361.01 in state fiscal year 2007 on collateral services and \$292,389.18 on collateral services in state fiscal year 2008. Thus, DMS will not experience such expenditures in future fiscal years.

(d) How much will it cost to administer this program for subsequent years? The number of out-of-state LPN's or RN's who may choose to serve Kentucky Medicaid recipients and, thus, be reimbursed by DMS as a result of this amendment is indeterminable. Currently, border states Tennessee and Virginia participate in the Nurse Licensure Compact and Missouri recently passed legislation to join the Compact. Regarding collateral services, which are no longer reimbursable per CMS, DMS spent \$295,361.01 in state fiscal year 2007 on collateral services and \$292,389.18 on collateral services in state fiscal year 2008. Thus, DMS will not experience such expenditures in future fiscal years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.



## PROPOSED AMENDMENTS RECEIVED THROUGH NOON, NOVEMBER 13, 2009

EDUCATION PROFESSIONAL STANDARDS BOARD  
(Amendment)

## 16 KAR 2:010. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 161.020, 161.028(1), 161.030  
 STATUTORY AUTHORITY: KRS 161.028(1)(a), (b), (f), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(f) requires the board to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board under 16 KAR 5:010 for a specific certification or which has been approved for certification by the state education agency of another state.

(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 16 KAR 6:010.

(3) "Base certificate" means a stand-alone license to teach which encompasses authorization to teach introductory and interdisciplinary courses in related fields.

(4) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 16 KAR 7:010.

(5) "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope and awarded on the basis of completion of an endorsement program or a combination of educational requirements, assessments and experience as outlined in Section 5 of this administrative regulation.

(6) "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.

(7) "Kentucky teacher standards" means the standards established in 16 KAR 1:010 that identify what a Kentucky teacher shall know and be able to do.

(8) "Major" means an academic area of concentration consisting of at least thirty (30) hours of coursework.

(9) "Professional teaching certificate" means the document issued to:

(a) An individual upon successful completion of the beginning teacher internship; or

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

(10) "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(11) "Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject area that can be taught under this limited certificate.

(12) "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

Section 2. Certificate Issuance. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has submitted a completed TC-1 application form and has successfully completed:

(a)1. At least a bachelor's degree with:

a. A cumulative grade point average of 2.50 on a 4.0 scale; or

b. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or

2. As required by Section 4(2)(g)6 or (4)(e) of this administrative regulation, a master's degree with:

a. A cumulative grade point average of 2.50 on a 4.0 scale; or

b. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(b) An approved program of preparation; and

(c) The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Professional Teaching Certificate Renewal. (1) The renewal shall require completion of a fifth-year program of preparation which is consistent with:

(a) The Kentucky teacher standards established in 16 KAR 1:010; or

(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation in KAR Title 16.

(2) The first five (5) year renewal shall require:

(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Completion of the required components of the continuing education option for initial certificate renewal as [the professional development plan and a partial portfolio for the continuing education option] established in 16 KAR 8:030.

(3) The second five (5) year renewal shall require:

(a) Completion of the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Successful completion of the continuing education option as [professional development plan and a full portfolio for the continuing education option] established in 16 KAR 8:030.

(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on:

(a) The Kentucky teacher standards established in 16 KAR 1:010;

(b) The accreditation and program approval standards established in 16 KAR 5:010, including the content standards of the relevant national specialty program associations; and

(c) The goals for the schools of the Commonwealth specified in KRS 158.6451 and the student academic expectations established in 703 KAR 4:060.

(2) A base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Interdisciplinary early childhood education, birth to primary, established in 16 KAR 2:040;

(b) Elementary school: primary through grade 5 to include preparation in the academic disciplines taught in the elementary school.

1. The elementary certificate shall be valid for teaching grade 6 if grade 6 is taught in a self-contained classroom or in a school organization in which grade 6 is housed with grade 5 in the same building.

2. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.

(c)1. Middle school option 1: grades 5 through 9 with the equivalent of one (1) major to be selected from:

a. English and communications;

b. Mathematics;

c. Science, or

d. Social studies;

2. Middle school option 2: grades 5 through 9 with 2 middle school teaching fields to be selected from:

- a. English and communications;
- b. Mathematics;
- c. Science; or
- d. Social studies;

3. The grades 5 through 9 mathematics certificate shall be valid for teaching Algebra I grades 10 and 11.

4. A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under this subsection or subsection (3) of this section, including certification for teaching exceptional children, shall be required to complete one (1) middle school teaching field;

(d) Secondary school, grades 8 through 12 with one (1) or more of the following majors:

1. English;
2. Mathematics;
3. Social studies;
4. Biology;
5. Chemistry;
6. Physics; or
7. Earth science;

(e) Grades 5 through 12 with one (1) or more of the following majors:

1. Agriculture;
2. Business and marketing education;
3. Family and consumer science;
4. Industrial education; or
5. Engineering and technology;[education;]

(f) All grade levels with one (1) or more of the following specialties:

1. Art;
2. A foreign language;
3. Health;
4. Physical education;
5. Integrated music;
6. Vocal music;
7. Instrumental music; or
8. School media librarian; or

(g) Grades primary through 12 for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

1. Learning and behavior disorders;
2. Moderate and severe disabilities;
3. Hearing impaired;
4. Hearing impaired with sign proficiency;
5. Visually impaired;
6. Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a master's degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 2; or

7. Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a baccalaureate degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 3.

(3) A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

- (a) Psychology, grades 8-12;
- (b) Sociology, grades 8 through 12;
- (c) Journalism, grades 8 through 12;
- (d) Speech/media communications, grades 8-12;
- (e) Theater, primary through grade 12;
- (f) Dance, primary through grade 12;
- (g) Computer information systems, primary through grade 12;

or  
(h) English as a second language, primary through grade 12.

(4) An endorsement to certificates identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

- (a) Computer science, grades 8-12;
- (b) English as second language, primary through grade twelve (12);

(c) Gifted education, primary through grade 12;

(d) Driver education, grades 8-12;

(e) Literacy specialist, primary through grade 12, which shall require a master's degree in reading or literacy;[Reading and writing which shall require a master's degree in reading, primary through grade twelve (12);]

(f) Reading, primary through grade 12;

(g) Instructional computer technology, primary through grade twelve (12);

(h)(g) Teacher Leader, all grades;

(i)(h) Other instructional services - school safety, primary through grade twelve (12);

(j)(i) Other instructional services - environmental education, primary through grade 12;

(k)(j) Other instructional services - elementary mathematics specialist, primary through grade 5;

(l)~~[school nutrition, primary through grade twelve (12). The endorsement for school nutrition shall be obtained by either:~~

1. ~~Completion of the requirements of Section 5(2) of this administrative regulation; or~~

2. ~~Obtaining the school food service and nutrition specialist (SFSN) credential issued by the American School Food Service Association (ASFSa); or~~

(k) Learning and behavior disorders, grades eight (8) through twelve (12).

1. This endorsement shall be issued following completion of the requirements of Section 5(2) of this administrative regulation; and

2. This endorsement shall only be issued to candidates with preparation and certification for a base or restricted base certificate for the secondary grades 8-12; or

(m) American Sign Language, primary through grade 12.

Section 5. Additional Certification. (1) A certificate extension may be issued for any base or restricted base certificate area offered in Section 4(2) or (3) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.

(2) A certificate endorsement may be issued for any area listed in Section 4(4) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments, and

(c) Recommendation from an approved preparation program.

(3)(a) ~~[In order to assist districts in meeting the "highly-qualified" teacher requirements of the No Child Left Behind Act of 2001, 20 U.S.C. 6301 et seq.,]~~ A professionally-certified teacher may add a certificate endorsement or extension if the teacher meets the requirements established in paragraph (b) of this subsection.

(b) A certificate extension or certificate endorsement shall be issued if an educator submits a completed TC-HQ application and meets the following requirements:

1. A valid Kentucky professional teaching certificate;

2 a Current employment in a certified position,

b ~~[or]~~ a bona fide offer of employment in a certified position in a Kentucky public school; or

c Approval of the local district superintendent;

3. Successful completion of the applicable content assessments; and

4. Either:

a. A declared major in the area of certification being sought; or

b. A combination of education, experience, professional development, awards and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as evidenced by a score of ninety (90) points on the index contained

within the application form, TC-HQ.

i. Points shall be granted only for experience, professional development, awards or achievements earned relative to the specific content area, student population taught, and grade range served;

ii. Coursework shall be validated on the application by a Kentucky college or university approved by the EPSB to serve as a "clearinghouse" for the purposes of this option; and

iii. Successful completion of the appropriate content assessment or assessments for the certificate area being added shall count for forty-five (45) points.

(4) If a teacher currently holds a professional certificate in the secondary grades 8-12, and applies for a certificate extension or endorsement in the same content area for middle school grades 5-9, the teacher shall not be required to complete the content assessment.

(5) A certificate extension or endorsement issued under the requirements established in paragraph (b) of this subsection shall be permitted in the areas of English, mathematics, sciences, foreign languages, or social studies. Health and physical education areas may be added only for those teachers holding the correlative certificate.

Section 6. A candidate pursuing certification via an alternative route to certification shall receive the same certificates delineated in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section 7. Application for certification or additional certification shall be made on Form TC-1 and shall be accompanied by the fees required by 16 KAR 4.040.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form TC-1, rev. 4/2004, Education Professional Standards Board; and

(b) Form TC-HQ, edition 10/2009[4/2004], Education Professional Standards Board.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 30 p.m.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: October 19, 2009

FILED WITH LRC: November 6, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 30, 2009 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative

regulation establishes the Kentucky certification to be issued for teaching positions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform teacher candidates and school districts of the appropriate certification for public school teaching positions in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the Education Professional Standards Board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(f) requires the Education Professional Standards Board to issue and renew any certificate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the specific types of teaching certifications available in the Commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will expand the teaching permission for holders of the current Kentucky certificate for Middle Grades Mathematics, Grades 5-9, to teach Algebra I in grades 10 and 11 and adds a new endorsement for Elementary Mathematics Specialist, Grades Primary through 5. This amendment adds a new certification area for Literacy Specialist, Primary through 12 and a new Reading endorsement, Grades Primary through 12. This amendment also modifies the highly qualified option to expand one's certification to move the successful content assessment score or scored into the 90 point formula, clarifies the experience accepted, and makes changes in the certification areas affected. Finally, this amendment eliminates the endorsement for School Nutrition.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow school districts greater flexibility in using their current work force to serve the needs of students. This amendment also creates new certification areas in literacy and mathematics that will assist both students and teachers in these critical learning areas.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the Education Professional Standards Board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(f) requires the Education Professional Standards Board to issue and renew any certificate.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow educators and school districts more flexibility in assigning appropriately prepared educators to teaching assignments. This amendment will assist districts in identifying educators who have specializations in literacy and mathematics so that these educators can be used as resource in the district.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, educators, and students.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts and students will not have to take any action to comply with this amendment. Educators will have to either complete a program or apply for additional certificate if they have completed the program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An educator who chooses to pursue additional certification will have to pay a \$50 application fee for certification. There are no other costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): School districts will have the ability to use their current work force in additional teaching areas. School districts will have the use of educators who have specialized in reading and mathematics to assist other teachers and students. Educators will have the opportunity to expand their certification specialties and students will benefit from the availability of additional certified teachers.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This does not establish or increase any fees either directly or indirectly

(9) TIERING: Is tiering applied? No, all educators who meet the requirements for a certification area shall be treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board and school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRAS 161.020, 161.028, and 161.030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This is not a revenue generating regulation, and therefore no revenue shall be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This is not a revenue generating regulation, and therefore no revenue shall be generated.

(c) How much will it cost to administer this program for the first year? There shall be no additional cost to any government entity

(d) How much will it cost to administer this program for subsequent years? There shall be no additional cost to any government entity

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-) N/A

Expenditures (+/-) N/A

Other Explanation: This regulation simply outlines the types of certifications available to Kentucky teachers, therefore it should not have any fiscal impact other than giving school districts additional options when locating a certified teacher for a classroom.

#### EDUCATION PROFESSIONAL STANDARDS BOARD (Amendment)

16 KAR 2:120. Emergency certification and out-of-field teaching.

RELATES TO: KRS 157.390, 161.020, 161.028, 161.030,

161.100, 161.1211, 161.1221, 334A.030, 334A.033, 334A.035, 334A.050, 334A.060

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(1), 161.100, 161.1221(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.100 authorizes the Education Professional Standards Board to establish qualifications for granting emergency certificates if qualified teachers are not available for specific positions. KRS 161.1221(1) requires the Education Professional Standards Board to establish a definition for out-of-field teaching. This administrative regulation establishes the qualifications and procedures for emergency certifications and establishes the definition for out-of-field teaching.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification for the position unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2 (1) In order to comply with KRS 161.100 in establishing the need for employing emergency teaching personnel, the superintendent of the local school district and the board of education shall make the following declaration to the Education Professional Standards Board on Form TC-4F:

(a) No qualified teachers have applied for the vacant position and to our knowledge qualified teachers are not available for the position;

(b) Diligent efforts have been made to recruit a qualified teacher for the vacant position, and furthermore, this vacancy has been made known locally by appropriate means;

(c) The local school district has been unsuccessful in recruiting qualified teachers for the vacant position from the listings of teachers supplied by the placement services of the teacher education institutions;

(d) The position will be filled by the most suitable applicant available, giving preference to the factors of academic preparation, prior teaching experience or related educational work, and personal attributes compatible with the demands of the teaching profession, and

(e) The local school district has conducted a criminal records check as required by KRS 160.380 for each applicant prior to applying for the emergency certificate.

(2)(a) The Education Professional Standards Board, depending upon the assessment of need for the position and the availability or anticipated availability of qualified teachers, shall approve or disapprove a request for the employment of emergency teachers

1. The term of validity of an emergency certificate may be limited to a period less than the full school year.

2. The beginning date shall be no earlier than the date the request form is received by the Education Professional Standards Board.

3. In accordance with the licensure requirements of KRS 334A.030, 334A.033, 334A.035, 334A.050, and 334A.060, the Education Professional Standards Board shall not issue an emergency certificate for teaching exceptional children with communication disorders.

(b) Until June 30, 2011, the issuance of an emergency certificate for a full-time assignment for each subsequent year shall require completion of six (6) hours of credit from the preparation program leading to the required certification for the position.

(c) Beginning July 1, 2011, an emergency certificate shall not be issued to the same person in any subsequent year unless the original emergency certificate was issued under the following conditions:

1. The emergency certificate was issued after February 15 of a school year; or

2. The emergency certificate was issued for less than fifty (50) percent of the person's class schedule.

(d) If an emergency certificate is issued to a person pursuant to paragraph (c)1 or 2 of this subsection, there shall be no more than one (1) subsequent issuance of an emergency certificate to the same person.

(3)(a) Emergency certification for an assignment as teacher of exceptional children shall be issued with the condition that the applicant shall receive intensive training on special education top-

ics, including IEP, assessment, evaluation, individualized instruction, methods, and management. This training shall be accomplished as follows:

1. The applicant shall complete twelve (12) clock hours of training as required by the Office of Special Instructional Services of the Kentucky Department of Education;

2.a. The applicant shall complete an additional six (6) clock hours of training during the fall conference conducted by the Division of Exceptional Children Services of the Kentucky Department of Education. Teachers employed after the fall conference shall complete these six (6) clock hours of training during the spring conference of the Council for Exceptional Children; or

b. If the applicant is unable to attend either the fall conference or the spring conference, the applicant shall complete an additional six (6) clock hours of training offered through one (1) of the state's eleven (11) special education cooperatives. The training shall be similar to the topics covered at the conferences, and

3. The applicant shall participate in at least one (1) day of flexible in-service training, relevant specifically to special education. The training shall be limited to visitation in a classroom of an exemplary special education teacher, special education training relevant to the identified needs of the teacher, or other training provided by the Office of Special Instructional Services

(b) The Kentucky Department of Education shall report to the Education Professional Standards Board those emergency certified teachers of exceptional children who have not completed the training requirements established in this subsection by June 30 of each year for the preceding school year.

(4)(a) The superintendent of the local school district and the board of education may establish the need for emergency substitute teachers on the basis of anticipated shortages of regularly certified teachers and in accordance with district policies and procedures established for the selection and employment of substitute teachers. Emergency certificates for substitute teaching may then be issued by the local school district subject to the priority schedule for the employment of substitute teachers as established by 16 KAR 2.030.

(b) Each local school district shall report by June 30 of each year the number of days of substitute teaching performed by each emergency teacher.

(5) The Education Professional Standards Board shall periodically review the numbers of emergency certificates issued for full-time, part-time, and substitute teaching by school district, by position, and by academic preparation.

(6)(a)1. An emergency certificate for full-time or part-time employment shall be issued only to individuals who:

a. Have completed a minimum of a bachelor's degree from a regionally accredited college; and

b. (i) Have a cumulative minimum grade point average of 2.5 on a 4.0 scale; or

(ii) Have a minimum grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework.

2. An emergency certificate for full-time or part-time employment shall not be issued to individuals who have been judged to be unsatisfactory in the beginning teacher internship established in 16 KAR 7.010.

(b)1. An emergency certificate for substitute teaching shall be issued to individuals who

a. Have completed a minimum of sixty-four (64) semester hours of credit from a regionally accredited institution; and

b. (i) Have a cumulative minimum grade point average of 2.5 on a 4.0 scale; or

(ii) Have a minimum grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework.

2. An emergency certificate for substitute teaching issued for the 1992-93 school year may be reissued for 1993-94 and for succeeding consecutive years.

(c) An emergency certificate for substitute teaching in any career and technical education or occupation-based position [health, technical, or industrial occupation] may be issued to persons who have a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as

determined by evidence of a passing score on the General Education Development Test.

(7)(a) A Form TC-4F signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts of all college credits earned by the prospective emergency teacher.

(b) A TC-4Ve signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated career and technical or occupation-based emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts and certification of all educational attainment and work experience earned by the prospective emergency teacher.

(c) An emergency certificate for substitute teaching shall not require application to the Education Professional Standards Board. Local school districts shall issue emergency certificates for substitute teaching pursuant to the requirements of this administrative regulation and other pertinent Kentucky statutes and administrative regulations regarding school personnel.

1. A local school district shall require candidates for an emergency certificate for substitute teaching to complete a Form TC-4.

2. A local school district shall require candidates for an emergency certificate for substitute teaching for career and technical education or occupation-based emergency positions to complete a Form TC-4VE.

3. A local school district shall submit any TC-4 or TC-4VE application on which the candidate has provided an affirmative answer to any question in Section IV, Character and Fitness of the application to the Education Professional Standards Board for approval prior to employing the candidate in a substitute teaching position.

Section 3. Rank and Salary Provisions. (1) The Education Professional Standards Board shall issue the emergency certificate for full-time or part-time employment established in Section 2 of this administrative regulation with a rank designation based upon the following criteria:

(a) A teacher holding a valid Kentucky teaching certificate shall be issued an emergency certificate for full-time or part-time employment at the rank designated on the teacher's regular certificate.

(b)1. A new teacher holding a valid one (1) year provisional certificate issued upon enrollment in the Kentucky Teacher Internship Program established in 16 KAR 7.010 shall be issued an emergency certificate for part-time employment at the rank designated on the teacher's one (1) year provisional certificate.

2. The teacher shall maintain a half-time enrollment in the internship as defined in 16 KAR 7.010 to remain eligible for the higher rank established in this paragraph.

3. If the teacher terminates or otherwise fails to continue enrollment in the internship prior to its successful completion, the teacher shall be reclassified at Rank IV until the teacher is properly reenrolled in the internship program.

(c) A new teacher holding a valid Kentucky Statement of Eligibility shall be issued an emergency certificate for full-time or part-time employment at Rank IV until the teacher

1. Is properly enrolled in the Kentucky Teacher Internship Program on at least a half-time basis as established in 16 KAR 7.010; and

2. Possesses the one (1) year provisional certificate referenced in paragraph (b)1 of this subsection.

(d) An applicant for the emergency certificate for full-time or part-time employment who does not hold a valid Kentucky teaching certificate shall be issued the emergency certificate at Rank IV.

(2) Local school districts issuing the emergency certificate for substitute teaching established in Section 2 of this administrative regulation shall adhere to the Rank classifications established in KRS 161.1211.

Section 4. Out-of-field Teaching. (1) Pursuant to KRS 161.1221(1), out-of-field teaching shall be classified in the following four (4) categories:

(a) The number of emergency certificates issued by grade range, subject field, and district;  
(b) The number of probationary certificates issued by grade range, subject field, and district;

(c) The number of temporary provisional certificates issued by grade range, subject field, and district; and  
(d) The number of teachers who do not possess a certificate of legal qualifications for the professional position they hold in the public schools, including a breakout of:

1. The number of teachers who hold no certificate;
2. The number of teachers who hold an expired certificate;
3. The number of certified teachers who are teaching outside of the subject field or fields indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection; and

4. The number of certified teachers who are teaching outside the grade range indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection.

(2) If data is available, reports on out-of-field teaching in the four categories established in subsection (1) of this section shall differentiate between teachers who possess the equivalent of a college major, minor or area of concentration in the subject area they are teaching.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form TC-4, 10/2009;

(b) Form TC-4F, revised 10/2009; and

(c) Form TC-4VE, 10/2009 [6/2000, is incorporated by reference.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: October 19, 2009

FILED WITH LRC: November 6, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 30, 2009 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definition for out-of-field teaching and establishes the qualifications and procedures for emergency certifications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform school districts of the appropriate certification for public school teaching positions in Kentucky and to make candidates aware of the requirements for an emergency teaching certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.100 authorizes the Education Professional Standards Board to establish qualifications for granting emergency certificates if qualified teachers are not available for specific positions. KRS 161.1221(1) requires the Education Professional Standards Board to establish a definition for out-of-field teaching.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for an emergency teaching certificate and establishes the procedures by which a school district may apply for an emergency teaching certificate.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. This amendment will eliminate the subsequent issuance of a full-time emergency teaching certificate to the same individual for a second full year unless the original certificate was issued after February 15 of the a given school year or if the original emergency certificate was used to cover fifty (50) percent of less of the individual's teaching assignment.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that students in Kentucky are receiving instruction from a highly qualified teacher.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.100 authorizes the Education Professional Standards Board to establish qualifications for granting emergency certificates if qualified teachers are not available for specific positions

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow a school district to obtain an emergency teaching certificate for an individual if it is unable to find a qualified, suitable candidate for a teaching position, but limits the issuance of this certificate to one year. This amendment will allow school districts flexibility in staffing when emergency situations arise while ensuring that the district is employing qualified candidates for positions

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, educators, and students.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts will have to increase their recruitment efforts in teaching fields or areas where they have requested an emergency certificate to ensure a qualified candidate is employed in the position the year after the district hires an emergency. Students will not have to take any action to comply with this amendment. Educators who receive an emergency certificate will either have to give up the position or enter and complete an alternative certification program to seek the same teaching position in the following year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). There are no additional costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) School districts will benefit from the flexibility to use an emergency certified teacher. Students will benefit from limiting the use of the emergency certificate.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary.



(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This does not establish or increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, all educators and school districts shall be treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board and school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRAS 161.020, 161.028, and 161.030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This is not a revenue generating regulation, and therefore no revenue shall be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This is not a revenue generating regulation, and therefore no revenue shall be generated.

(c) How much will it cost to administer this program for the first year? There shall be no additional cost to any government entity.

(d) How much will it cost to administer this program for subsequent years? There shall be no additional cost to any government entity.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: This regulation simply outlines the requirements and procedures for obtaining an emergency teaching certificate, and therefore should have no fiscal impact.

#### FINANCE AND ADMINISTRATION CABINET Office of the Secretary (Amendment)

200 KAR 5:314. Disclosure of contractor's financial records and information to certain governmental entities.

RELATES TO: KRS 45A.030, 61.870-61.884[Chapter 45A]

STATUTORY AUTHORITY: KRS 45A.035(2)(h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035(2)(h) authorizes the Secretary of the Finance and Administration Cabinet to promulgate this administrative regulation to govern confidentiality of technical data and trade secrets information submitted by actual or prospective bidders or offerors. This administrative regulation establishes requirements which allow governmental oversight agencies to obtain access to the financial data of state contractors.

Section 1. All state contracts, as defined in KRS 45A.030(7), shall contain the following language: "The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. The contractor also recognizes that any such books, documents, pa-

pers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. [Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(e) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency were providing the service".]

LORI H. FLANERY,

For JONATHAN MILLER, Secretary

APPROVED BY AGENCY: November 6, 2009

FILED WITH LRC: November 9, 2009 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009, at 11 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins, Policy Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates policies and procedures that implement KRS 45A.035(2)(h).

(b) The necessity of this administrative regulation: This administrative regulation provides state agencies issuing contracts with language that must be in all contracts

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Finance and Administration Cabinet is required by KRS 45A.035 to promulgate administrative regulations governing bidding on state contracts. This administrative regulation sets out language for all state contracts that will allow governmental oversight agencies to access the financial information of state contractors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all parties to a contract with the Commonwealth that the state's oversight agencies may have access to contractors' financial data.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of

(a) How the amendment will change this existing administrative regulation: The amendments reconcile the public disclosure provisions in the existing regulation with the statutory public disclosure and exemption provisions in the Kentucky Open Records law.

(b) The necessity of the amendment to this administrative regulation: The amendments provide state agencies and vendors with updated information and guidance that comply with Finance and Administration Cabinet policies.

(c) How the amendment conforms to the content of the authorizing statutes See (1)(c) above.

(d) How the amendment will assist in the effective administra-



tion of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will impact all state agencies and state contractors.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated agencies identified in question (3) will have to take to comply with this administrative regulation or amendment: State agencies and contractors already have to comply with the regulation and the Kentucky Open Records Act today. The amendments just clarify that the Kentucky Open Records Act governs what is subject to disclosure and what is exempt.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No increase in cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): See (2)(a).

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No increase in cost.

(b) On a continuing basis: No increase in cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied. The administrative regulation involves disciplinary actions that may be taken against any vendor, regardless of the characteristics of the vendor, when the requirements of the administrative regulation are met and it is in the best interest of the Commonwealth.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45A.035(2)(h)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Not applicable.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not applicable.

(c) How much will it cost to administer this program for the first year? No increase.

(d) How much will it cost to administer this program for subsequent years? No increase.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

## GENERAL GOVERNMENT CABINET State Board of Examiners and Registration of Landscape Architects (Amendment)

### 201 KAR 10:050. Fees.

RELATES TO: 323A.060, 323A.070, 323A.100(1), (4)

STATUTORY AUTHORITY: KRS 323A.060, 323A.100(1), 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: The board is authorized by KRS 323A.060 to promulgate administrative regulations to establish fees for services. This administrative regulation establishes fees for landscape architect licensees.

Section 1. Fees. The following nonrefundable fees shall be paid as applicable:

(1) Renewal fees:

(a) Active license: \$170.

(b) Inactive license: \$150.

(2) Duplicate certificate: twenty-five (25) dollars.

(3) Issuance of original license certificate \$200.

(4) Restoration of a suspended license: renewal fee established in subsection (1) of this section, plus an amount calculated pursuant to KRS 323A.100(1).

(5) Reactivation fee: \$170.

(6) Reciprocal application fee ~~issuance of a license on reciprocity basis~~: \$250.

(7) Examination:

(a) Processing fee. A \$100 nonrefundable processing fee shall be submitted with a new application for examination.

(b) Examination sections:

1. Section C: \$295.

2. Section E: \$295.

BILLY F. VANPELT, President

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2009 at 10 a.m. at the Board's office, Spindletop Administration Building, 2624 Research Park Drive, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 2009, five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4 30 pm on January 4, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jane Gardner, Executive Director, Board of Examiners and Registration of Landscape Architects, Spindletop Administrative Building, Suite 106, 2624 Research Park Drive, Lexington, Kentucky 40511, phone (859) 246-2753, fax (859) 246-2754.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jane Gardner

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets fees.

(b) The necessity of this administrative regulation: This regulation is necessary to apprise interested individuals of the fees charged by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 323A.060 that requires the board to promulgate administrative regulations to establish fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation appraises interested individuals of the fees charged by the board

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This regulation states the cost of applying for a license in the Commonwealth for individuals who currently hold a license in another jurisdiction (state).

(b) The necessity of the amendment to this administrative regulation: This amendment clarifies the intent and meaning of an existing fee.

(c) How the amendment conforms to the content of the authorizing statutes: The statute allows the Board to establish fees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will make clearer the fee structure for out-of-state applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates this regulation will affect approximately 15-20 individuals, while affecting no businesses, organizations, state or local governments.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals affected will more easily understand that the fee is specifically the cost of applying for a license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees are outlined in the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The individuals will clearly know what fees must be paid to be licensed in the Commonwealth of Kentucky.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new costs will be incurred by the change.

(b) On a continuing basis: No new costs will be incurred by the change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As this regulation establishes fees, no additional funding is required for implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees is required to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation will increase fees for those applicants from other states who apply for licensure in the Commonwealth.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact out-of-state landscape architects who apply for a license to practice landscape architecture in the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323A.060 authorizes the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not affect the expenditures of the agency, but could increase revenues by as much as \$3,000 annually.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The exact amount is not known, as it depends upon applications, but it could increase revenues as much as \$3,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment to the administrative regulation could generate as much as \$3,000 annually.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

#### 201 KAR 20:163. Standards for approved evaluators.

RELATES TO KRS 314.085

STATUTORY AUTHORITY. KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.085 authorizes the board to designate evaluators to perform chemical dependency or mental health evaluations. This administrative regulation establishes the standards that evaluators must meet to be approved by the board to conduct its required evaluations.

Section 1. Approved Evaluators for Chemical Dependency or Mental Health Evaluations. (1) The board shall maintain a list of evaluators who are approved to perform chemical dependency or mental health evaluations ordered pursuant to KRS 314.085

(2)(a) To be placed on this list, an evaluator shall submit evidence to the board that he is able to comply with the standards set out in this administrative regulation.

(b) The evaluator shall submit:

1. A curriculum vitae;

2. A copy of a current credential; and

3. The current address and telephone number of the evaluator's practice.

(3) The board shall issue a letter of approval to an evaluator who complies with subsection (2) of this section. ~~[(4) The board may withdraw its letter of approval to an evaluator upon a determination that the evaluator no longer complies with this administrative regulation.]~~

Section 2. Individual Evaluator Standards. (1) An evaluator shall have documented training and experience in the specialty area of chemical dependency or mental health.

(2) An evaluator shall be licensed or certified as one of the following

(a) Psychiatrist;

(b) Physician addictionologist;

(c) Psychologist;

(d) Advanced registered nurse practitioner;

(e) Certified alcohol and drug counselor;

(f) Certified chemical dependency evaluator;

(g) Social worker;

(h) Employee assistance program specialist; or

(i) Marriage and family therapist.

(3) An evaluator whose license or certification is not listed in

subsection (2) of this section may request approval and be accepted if the evaluator can show evidence that his license or certification includes training in chemical dependency or mental health.

(4) An evaluator shall maintain resources for referral for treatment if the evaluator does not provide treatment services.

(5) An evaluator shall disclose fees for services prior to performing the evaluation.

(6) An approved evaluator shall update his evidence of compliance with these standards at least every two (2) years.

(7) An evaluator may voluntarily request removal from the list by submitting a written notice to the board.

Section 3. Evaluation Standards. (1) An evaluation shall include the following components.

- (a) Social history;
- (b) Status of chemical dependency, if it is a chemical dependency evaluation;
- (c) Psychological status;
- (d) Results of any testing performed;
- (e) Evaluation and effectiveness of any prior treatment;
- (f) Recommendations regarding the need for any further treatment or further evaluations;
- (g) Assessment of the nurse's ability to function safely;
- (h) Any parameters under which the nurse can practice nursing, if applicable;
- (i) Recommendations for any work restrictions or monitoring reports; and
- (j) Any other relevant information.

Section 4. Removal of Approval. The board may withdraw its letter of approval to an evaluator who:

- (1) Fails to comply with Section 2(2) through (6) of this administrative regulation;
- (2) Has disciplinary action taken against their license or credential;
- (3) Is convicted of a misdemeanor or felony;
- (4) Fails to provide an evaluation in conformity with Section 3 of this administrative regulation; or
- (5) Fails to provide for the confidentiality of patient information.

JIMMY ISENBERG, President

APPROVED BY AGENCY: October 15, 2009

FILED WITH LRC: October 26, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009, at 10 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 5, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: It sets standards for the Board to approve chemical dependency evaluators.
  - (b) The necessity of this administrative regulation: KRS 314.085 requires the Board to approve chemical dependency evaluators.

lators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards for the approval of chemical dependency evaluators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards for the approval of chemical dependency evaluators.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It provides standards for the withdrawal of approval of a previously approved chemical dependency evaluator.

(b) The necessity of the amendment to this administrative regulation: It is necessary to specify for what reasons the board would withdraw the approval of an evaluator.

(c) How the amendment conforms to the content of the authorizing statutes: By setting the appropriate standards.

(d) How the amendment will assist in the effective administration of the statutes: By setting the appropriate standards for withdrawal of approval.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: approved chemical dependency evaluators; presently there are 77.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. They will need to take no actions so long as they comply with the standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? There is no cost to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? They will be in compliance with the regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, 314.085.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)**

**201 KAR 20:230. Renewal of Licenses.**

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes requirements and procedures for the renewal of licenses.

Section 1. Eligibility for Renewal of Licenses. To be eligible for renewal of licenses, applicants shall:

- (1) Hold a valid and current license issued by the board;
- (2) Submit a completed application form as required by 201 KAR 20:370, Section 1(1), to the board office, postmarked no later than the last day of the licensure period;
- (3) Submit the current fee required by 201 KAR 20:240;
- (4) Have met requirements of 201 KAR 20:215, if applicable;
- (5) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation;
- (6) Submit certified copies of any disciplinary actions taken in other jurisdictions with a letter of explanation or report any disciplinary action pending on licenses in other jurisdictions; and
- (7) Have paid all monies due to the board.

Section 2. An applicant ~~shall be exempt from meeting the continuing competency requirements of 201 KAR 20:215 if who is~~ renewing for the first time;

(1) An original Kentucky license issued by examination or endorsement; or

(2) A license that has been reinstated pursuant to 201 KAR 20:225 ~~[shall be exempt from meeting the continuing competency requirements of 201 KAR 20:215].~~

Section 3. The licensure period for renewal of licenses shall be as specified in 201 KAR 20:085.

JIMMY T. ISENBERG, President

APPROVED BY AGENCY: October 15, 2009

FILED WITH LRC: October 26, 2009 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009, at 10 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of busi-

ness January 5, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets procedures for renewal of nursing licenses.

(b) The necessity of this administrative regulation: The Board is required by statute to set these procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting procedures for renewal of licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting procedures for renewal of licenses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It will allow a nurse who is renewing a reinstated license for the first time to be exempt from continuing education requirements.

(b) The necessity of the amendment to this administrative regulation: It is being amended to conform the renewal provisions to those for nurses renewing an initial license. Both categories have generally earned sufficient continuing education in the licensure process such that requiring additional continuing education for renewal would be unnecessary.

(c) How the amendment conforms to the content of the authorizing statutes: By setting the appropriate procedures.

(d) How the amendment will assist in the effective administration of the statutes: By setting the appropriate procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses renewing a reinstated license for the first time, number unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET**  
**Board of Physical Therapy**  
**(Amendment)**

**201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.**

RELATES TO: KRS 327.040, 327.070

STATUTORY AUTHORITY: KRS 327.040(11), (12), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040 (12) and (13) authorize the Board of Physical Therapy to establish by administrative regulation a code of ethical standards and standards of practice for physical therapists and physical therapist assistants. This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070.

Section 1. Code of Ethical Standards. (1) Physical therapists and physical therapist assistants shall:

(a) Respect the rights and dignity of all patients;

(b) Practice within the scope of the credential holder's training, expertise and experience;

(c) Report to the board any reasonably suspected violation of KRS Chapter 327 or 201 KAR Chapter 22 by another credential holder or applicant within thirty (30) days; and

(d) Report to the board any civil judgment, settlement, or civil claim involving the credential holder's practice of physical therapy made against the credential holder relating to the credential holder's own physical therapy practice within thirty (30) days.

(2) Physical therapists and physical therapist assistants shall not:

(a) Verbally or physically abuse a client; or

(b) Continue physical therapy services beyond the point of reasonable benefit to the patient, unless the patient consents in writing.

Section 2. Standards of Practice for the Physical Therapist. While engaged in the practice of physical therapy, a physical therapist shall:

(1) Perform screenings in order to

(a) Provide information on a person's health status relating to physical therapy;

(b) Determine the need for physical therapy[additional] evaluation and treatment;

(c) Make a recommendation regarding a person's ability to return to work or physical activity; and

(d) Provide physical therapy [related] services;

(2) Evaluate each patient.

(a) Prior to initiation of treatment;

(b) Upon receipt of a patient from another physical therapy service, facility, or agency; and

(c) If requested by a referring professional;

(3) Reassess each patient in accordance with the following:

(a) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;

(b) Reassessing every ninety (90) days, with the physical therapist assistant present, patients in:

1. A facility defined in 902 KAR 20:086 as an intermediate care facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or

2. A school system

a. A forty-five (45) day grace period shall be allowed upon transfer from another school district or from the start of the school year.

b. During this grace period treatment may continue based upon the previous reassessment or initial evaluation;

(c) Reassessing each patient not otherwise noted every thirty (30) days following the initial evaluation or subsequent reassessment;

(d) Reassessing a patient whose medical condition has changed; and

(4) Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;

(5)(4) Be responsible for the physical therapy record of each patient;

(6)(5) Provide services that meet or exceed the generally accepted practice of the profession;

(7)(6) Explain the plan of care to the patient, to others designated by the patient, and to appropriate professionals;

(8)(7) Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supplier if the physical therapist makes recommendations for those;

(9)(8) Disclose in writing to each patient any financial interest, compensation, or other value to be received by the referral source:

(a) For services provided by the physical therapist;

(b) For equipment rental or purchase; or

(c) For other services the physical therapist may recommend for the patient.

(10)(9) Unless prohibited by law, as members of a business entity be allowed to pool or apportion fees received in accordance with a business agreement.

Section 3. Standards of Practice for the Physical Therapist Assistant. While engaged in the practice of physical therapy, the physical therapist assistant shall:

(1) Provide services only under the supervision and direction of a physical therapist;

(2) Refuse to carry out procedures that the assistant believes are not in the best interest of the patient or that the assistant is not competent to provide by training or skill level;

(3) Initiate treatment only after evaluation by the physical therapist;

(4) Upon direction from the physical therapist, gather data relating to the patient's disability, but not determine the significance of the data as it pertains to the development of the plan of care;

(5) Refer to the physical therapist inquiries that require an interpretation of patient information related to rehabilitation potential;

(6) Comply with the plan of supervision established by the physical therapist;

(7) Communicate with the physical therapist any change or lack of change that occurs in the patient's condition that may indicate the need for reassessment; and

(8) Discontinue physical therapy services if reassessments are not done in compliance with Section 2(3)(4)(i)-(l) of this administrative regulation, and communicate to the appropriate parties.

Section 4. Standards for Supervision. While supervising the physical therapist assistant and supportive personnel, the physical therapist shall:

(1)(a) At all times, including all work locations, be limited to:  
1. Supervising not more than four (4) full-time physical therapist assistants or supportive personnel; or  
2. The number of those persons providing part-time patient care for a period equivalent to that provided by four (4) full-time providers of patient care.

(b) Temporary failure to abide by the maximum staffing ratio of physical therapists to physical therapist assistants or supportive personnel required in this section for a period not to exceed seven (7) consecutive work days shall not constitute a violation of this standard;

(2) Not delegate procedures or techniques to the physical therapist assistant or supportive personnel if it is outside his or her scope of training, education or expertise.

(3) Be responsible for:

(a) Interpreting any referral;  
(b) Conducting the initial physical therapy evaluation;  
(c) Establishing reporting procedures to be followed by the physical therapist assistant and supportive personnel,  
(d) Evaluating the competency of the physical therapist assistant and supportive personnel;

(e) Supervising the physical therapist assistant by being available and accessible by telecommunications during the working hours of the physical therapist assistant;

(f) Insuring that if supportive personnel provide direct patient care that there is on site supervision by a physical therapist or physical therapist assistant;

(g) Insuring that a physical therapy student fulfilling [the] clinical education requirements [of a CAPTE-accredited program] shall receive on-site supervision by a physical therapist;

(h) Insuring that a physical therapist assistant student fulfilling [the] clinical education requirements [of a CAPTE-accredited program] shall receive on-site supervision of which eighty (80) percent may be by a credentialed physical therapist assistant;

(i) [Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;

(j) Reassessing every ninety (90) days, with the physical therapist assistant present, patients in:

1. A facility defined in 902 KAR 20.086 as an intermediate care facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or

2. A school system

a. A forty-five (45) day grace period shall be allowed upon transfer from another school district or from the start of the school year.

b. During this grace period treatment may continue based upon the previous reassessment or initial evaluation;

(k) Reassessing each patient not otherwise noted every thirty (30) days following the initial evaluation or subsequent reassessment;

(l) Reassessing a patient whose medical condition has changed; and

(m) Establishing discharge planning for patients who require continued physical therapy.

Section 5. Standards for Documentation. The physical therapist shall be responsible for the physical therapy record of a patient. The physical therapy record shall consist of:

(1) The initial evaluation, a written or typed report signed and dated by the physical therapist performing the evaluation that shall include:

(a) Pertinent medical and social history;

(b) Subjective information;

(c) Appropriate objective testing,

(d) Assessment, which may include problems, interpretation, and a physical therapy diagnosis identifying the nature and extent of the patient's impairment; and

(e) Plan of care, including:

1. Treatment to be rendered;  
2. Frequency and duration of treatment; and  
3. Measurable goals;

(2) Progress notes, which shall be written or typed, signed, and dated by the person rendering treatment, and countersigned and dated by the physical therapist if written by supportive personnel, physical therapist students, physical therapist assistant students, or examination candidates. The progress notes shall include:

(a) A current record of treatment,

(b) Patient's adverse response to treatment,

(c) Any factors affecting treatment; and

(d) Data obtained by all objective tests performed,

(3) Reassessment, which shall be written or typed, signed, and dated by a physical therapist. This reassessment shall be in compliance with Section 4(3)(i) through (l) of this administrative regulation:

(a) If the physical therapist is treating the patient, these reports may be incorporated into the progress notes.

(b) If a physical therapist assistant or supportive personnel are treating the patient, the report shall be a separate entry into the record.

(c) A reassessment shall include directly observed objective, subjective, and medical information completed by the physical therapist that is [data] necessary for the revision or reaffirmation of the plan of care and measurable goals;

(4) Discharge summary, which shall be a written or typed, signed, and dated statement.

(a) A physical therapist assistant may write the discharge summary, which shall be countersigned by the responsible physical therapist.

(b) The discharge summary shall include:

1. The date of discharge;

2. The reason for discharge,

3. The physical therapy status upon discharge; and

4. A discharge plan, which shall include recommendations the physical therapist has regarding the need for continuing physical therapy.

5. A discharge summary shall be written within thirty (30) days of the termination of the current plan of care if a subsequent plan of care has not been established; and

(5) The correct designation following the signature of the person who has entered a statement into the patient record shall be as follows:

(a) If written by a physical therapist: "PT". Appropriate designations for advanced physical therapy degrees may follow "PT";

(b) If written by a physical therapist's assistant: "PTA";

(c) If written by supportive personnel: "PT Aide", or "Physical Therapy Aide" or "PT Tech"; and

(d) If written by a student: "Physical Therapist Student" or "PT Student"; "Physical Therapist Assistant Student" or "PTA Student".

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: November 10, 2009

FILED WITH LRC: November 13, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2009 at 9 a.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Becky Klusch, Executive Director, Board

of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the code of ethical standards and standards of practice for Physical Therapists and Physical Therapist Assistants.

The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 327.040.

(b) How this administrative regulation conforms to the content of the authorizing statutes: It provides the standards of practice for credential holders.

(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It outlines the ethical conduct and standards of practice for credential holders.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the requirement for reassessments of physical therapy patients.

(b) The necessity of the amendment to this administrative regulation: To clarify reassessment guidelines of when they should be performed and written.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for the practice of physical therapy.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of performing reassessments.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 4,200 physical therapists and physical therapist assistants.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no change to regulated entities identified in question (3), only a clarification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities in questions (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarification

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No costs to the board.

(b) On a continuing basis: No costs to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency revenue fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not change the fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Physical therapists and physical therapists assistants credentialed by the board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040 and 327.050.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## GENERAL GOVERNMENT CABINET

### Board of Licensure and

### Certification for Dietitians and Nutritionists (Amendment)

#### 201 KAR 33:010. Fees.

RELATES TO: KRS 310.041(1), (5), 310.050

STATUTORY AUTHORITY: KRS 310.041(1), (5), 310.050, 310.041(9)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessitated by KRS 310.041(5) and 310.050 and sets forth in detail all fees charged by the board.

Section 1. Application Fee. (1) The application fee for licensure as a dietitian shall be fifty (50) dollars.

(2) The application fee for certification as a nutritionist shall be fifty (50) dollars.

(3) Application fees shall not be refundable.

Section 2. Renewal Fees and Penalties. (1) The annual renewal fee for licensure or certification shall be fifty (50) dollars for each credential;

(2) The late renewal fee for late renewal during the sixty (60) day grace period shall be twenty-five (25) dollars for each credential; and

(3) The reinstatement fee for licensure or certification renewal after the end of the sixty (60) day grace period shall be fifty (50) dollars for each credential.

(4) Renewal and reinstatement fees shall not be refundable.

(5) In order to be considered for reinstatement, a retired licensee shall pay a reinstatement fee of fifty (50) dollars and all renewal fees from the date of election of that status.

Section 3. Duplicate Registration Fees. The fee for a duplicate license or certificate shall be ten (10) dollars.

Section 4. Inactive and Retired Status. (1) A licensee who holds an inactive license shall pay fifteen (15) dollars annually to establish or retain inactive status.

(2) A licensee who retires a license shall not pay an annual fee.

CHERYL BENTLEY, Board Chair

APPROVED BY AGENCY: November 12, 2009



FILED WITH LRC: November 12, 2009 at 3 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2009 at 9 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Michael West, Board Counsel, Kentucky Board Licensure and Certification for Dietitians and Nutritionists, 700 Capitol Ave, Suite 118, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes fees for the licensure and certification of dietitians and nutritionists.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 310.041(1), (5), 310.050, and 310.041(9).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by delineating fees to be charged of licensees holding various forms of status with the Board.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment changes the regulation to allow for a licensee to deactivate his or her license or retire that license.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow licensees pay the appropriate fee.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board in administering this program by accurately reflecting the appropriate fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 1,179 licensed dietitians and 74 certified nutritionists.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals identified in question (3) will have the option of deactivating or retiring their license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be able to retain

status with the board and maintain compliance while not practicing this profession.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially. No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Inactive licensees will be charged a fee, but this will be a fee decrease since those electing that status will have previously been required to pay the fee for an active license.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It establishes a fee for inactive licenses.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 310.041(1), (5), 310.050, 310.041(9).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET

##### Board of Licensure for Dietitians and Nutritionists (Amendment)

#### 201 KAR 33:015. Application; approved programs.

RELATES TO: KRS 310.021(1), (3), 310.031(1), (2)

STATUTORY AUTHORITY: KRS 310.041(1), (2), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.021 establishes the standards for licensure as a dietitian. KRS 310.031 establishes the standards for certification as a nutritionist. This administrative regulation is necessary to clarify the procedure for submitting an application for licensure or certification, and delineate the characteristics of institutions which are approved by the board, as required by KRS 310.021 and 310.031.

Section 1. Application. (1) An application for a license to prac-

tice dietetics may be submitted after the requirements established in KRS 310.021 are met.

(2) An application for a certificate to practice nutrition may be submitted after the requirements established in KRS 310.031 are met.

(3) Each application for licensure or certification shall be accompanied by the application fee, established in 201 KAR 33:010, which is nonrefundable.

(4) All applications shall be signed by the applicant.

Section 2. Approved Programs. (1) A baccalaureate degree from a college or university approved by the board pursuant to KRS 310.021(3) or 310.031(2)(a) shall be a degree program that is listed as accredited by the Commission on Accreditation for Dietetics Education.

(2) If an applicant's baccalaureate degree is not listed as accredited by the Commission on Accreditation for Dietetics Education, then the applicant shall demonstrate at least forty-five (45) semester hours or sixty-eight (68) quarter hours, as evidenced by a certified copy of an academic transcript, of coursework at the baccalaureate or graduate level in addition to the hours required by KRS 310.031(2)(b). The coursework shall include content specific to each of the following areas:

- (a) Communication;
- (b) Counseling;
- (c) Physical and biological sciences;
- (d) Social sciences;
- (e) Research;
- (f) Food composition;
- (g) Nutrient metabolism;
- (h) Food systems management;
- (i) Nutrition therapy;
- (j) Lifecycle nutrition; and
- (k) Healthcare systems.

(3) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall include only didactic hours of graduate credit specifically related to human nutrition. Examples include:

- (a) Food sources of nutrients;
- (b) Physiological and chemical processes of digestion, absorption and metabolism;
- (c) Nutrient needs throughout the life cycle;
- (d) Nutrition assessment processes;
- (e) Pathophysiology of disease states;
- (f) Medical nutrition therapy;
- (g) Nutrient needs in exercise and fitness; and
- (h) Nutrition in health and wellness.

(4)(3) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall not include practicums, courses that are primarily obtained from work experiences, independent study, thesis, or dissertation credit hours.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Licensure/Certification", 2000 edition; and
- (b) ~~"Commission on Accreditation for Dietetics Education Coordinated Programs in Dietetics and Didactic Programs in Dietetics", 2000 edition.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

CHERYL BENTLEY, Board Chair

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 12, 2009 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009 at 9 a.m. (EST) at 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed

administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael West, Board Counsel, Kentucky Board Licensure and Certification for Dietitians and Nutritionists, 700 Capitol Ave, Suite 118, Frankfort, Kentucky 40601.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes education requirements for the licensure and certification of dietitians and nutritionists.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 310.041(1), (2), (6).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by delineating the education requirements for licensees.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment changes the regulation to allow for licensing of individuals not holding an accredited degree under certain circumstances

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow individuals to become licensed

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist the board in administering this program by accurately reflecting the appropriate fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 1,179 licensed dietitians and 74 certified nutritionists

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals identified in question (3) will not be impacted. Only new licensees will have the option to qualify under these standards

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Only new licensees will be impacted. They will have more flexibility in becoming licensed

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure and Certification for Dietitians and Nutritionists

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 310.041(1), (2), (6)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation

Revenues (+/-)

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Licensure and Certification for Dietitians and Nutritionists (Amendment)

#### 201 KAR 33:020. Renewals.

#### RELATES TO KRS 310.050

#### STATUTORY AUTHORITY: KRS 310.041, 310.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.050 provides that the board shall promulgate administrative regulations establishing procedures for annual renewal of licenses. This administrative regulation establishes those procedures.

Section 1. Regular Renewal. (1) A licensed dietitian or certified nutritionist shall annually, before November 1, pay to the board the renewal fee established by 201 KAR 33:010, Section 2, for the renewal of the license or certificate.

(2) If a license or certificate is not renewed before November 1 of each year, it shall expire.

(3) Compliance with continuing education requirements shall be documented as provided by 201 KAR 33.030.

Section 2. Late Renewal and the Grace Period. (1) A sixty (60) day grace period shall be allowed beginning November 1, during which a licensee or certificate holder may renew his or her license or certificate upon payment of the renewal fee plus the late renewal fee established by 201 KAR 33:010, Section 2.

(2)(a) A licensee or certificate holder may continue to practice during the sixty (60) day grace period,

(b) Upon request of the employer, a licensee or certificate

holder practicing in accordance with paragraph (a) of this subsection shall present evidence of a valid pre-existing license or certificate.

(3) A person requesting renewal of a certification during the sixty (60) day grace period shall comply with the continuing education requirements as required by KRS 310.050(3) and as specified by 201 KAR 33:030.

Section 3. Automatic Revocation. Upon revocation, a licensee or certificate holder shall no longer be eligible to practice in the Commonwealth:

Section 4. Licensure and Certification Reinstatement. After the sixty (60) day grace period, a license or certificate, which has been automatically revoked due to failure to renew, shall be reinstated if the licensee or certificate holder has:

(1) Paid the renewal fee plus a reinstatement fee as set forth by 201 KAR 33.010; and

(2) Documented that he or she has complied with the continuing education requirements established by 201 KAR 33.030.

This is to certify that the Chair of the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 310.

Section 5. Address. A licensee shall submit a current address to the board office by letter within thirty (30) days of an address change. The letter shall include the licensee's name, new address, phone number, and license number.

CHERYL BENTLEY, Board Chair

APPROVED BY AGENCY. November 12, 2009

FILED WITH LRC. November 12, 2009 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009 at 9 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael West, Board Counsel, Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, 700 Capitol Ave, Suite 118, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes renewal requirements for the licensure and certification of dietitians and nutritionists.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 310.041, 310.050

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This regulation will assist the board in administering this program by requiring licensees to keep their contact information up to date.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds a requirement to keep the board up to date regarding a licensee's contact information.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to help the Board maintain accurate records.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to help the Board maintain accurate records.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 1,179 licensed dietitians and 74 certified nutritionists.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals identified in question (3) will need to keep the Board up to date regarding their new contact information.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will be better able to receive notice of correspondence from the board.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 310.041, 310.050.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET

##### Board of Licensure and

##### Certification for Dietitians and Nutritionists

##### (Amendment)

201 KAR 33:030. Continuing education requirements for licensees and certificate holders.

RELATES TO: KRS 310.041(1), 310.050(3)

STATUTORY AUTHORITY: KRS 310.041(1), 310.050(3), 310.041(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.050(3) requires completion of continuing education prior to the renewal of a license or certificate, and KRS 310.041(1) requires the board to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes continuing education requirements for dietitians and nutritionists.

Section 1. (1)(a) The annual continuing education compliance period shall extend from November 1 of each year to October 31 of the next year.

(b) Prior to renewal of a license or certificate for the next licensure or certification period, a licensee or certificate holder shall have earned fifteen (15) hours of approved continuing education during the compliance period.

(c) A person who is either licensed as a dietitian or certified as a nutritionist, or who is both a licensed dietitian and certified nutritionist, shall have earned a total of fifteen (15) hours of approved continuing education during the compliance period, prior to renewal of a license or certificate for the next licensure period.

(2) An initial licensee or certificate holder shall be exempt from the continuing education requirements for the first license or certification renewal.

(3) No more than fifteen (15) hours of continuing education may be carried over into the next continuing education period

(4) It shall be the responsibility of each licensee or certificate holder to finance the costs of continuing education.

(5) For purposes of the audit set forth in subsection (8) of this section, every licensee or certificate holder shall maintain a record of all continuing education courses attended for two (2) years after the continuing education period. Appropriate documentation to be kept shall include:

(a) Certificates of attendance for the prior-approved continuing education;

(b) Transcripts for academic coursework;

(c) Reprints of journal articles published; or

(d) Proof of attendance, description of activity, and professional qualifications of the presenter for continuing education activities.

(6) Each licensee or certificate holder shall sign a statement on the renewal application form indicating compliance with the continuing education requirements. A license or certificate shall not be renewed without this sworn statement.

(7)(a) The board shall audit at least fifteen (15) percent of licensees' or certificate holders' continuing education records each year.

(b) Licensees or certificate holders who are audited shall be chosen in a random manner or at the discretion of the board

(c) Falsifying reports, records, or other documentation relating to continuing education requirements shall result in formal discipli-

nary action.

(8) A document which reflects a continuing valid registration with the Commission on Dietetic Registration shall constitute proof of compliance with the continuing education requirement by a person licensed as dietitian or certified as a nutritionist.

**Section 2. Approved Continuing Education Activities.** (1) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, interactive workshop, seminar or lecture which has been approved by the board.

(2) Criteria for subject matter.

(a) Subject matter for continuing education hours shall reflect the educational needs of the licensed dietitian or certified nutritionist and the nutritional health needs of the consumer.

(b) Subject matter shall be limited to offerings that are scientifically founded and offered at a level beyond entry-level dietetics for professional growth.

(c) The following areas shall be deemed appropriate subject matter for continuing education credit if, in the judgment of the board, they are directly related to the practice of dietetics or nutrition:

1. Sciences on which dietetic practice, dietetic education, or dietetic research is based including nutrition, biochemistry, physiology, food management and behavioral and social sciences to achieve and maintain people's nutritional health;

2. Nutrition therapy related to assessment, counseling, teaching, or care of clients in any setting; or

3. Management or quality assurance of food and nutritional care delivery systems.

(3) Standards for approval of continuing education programs and activities. A continuing education activity shall be approved if the board determines that it:

(a) Constitutes an organized program of learning, including a workshop or symposium, which contributes directly to the professional competency of the licensee or certificate holder;

(b) Pertains to subject matters which relate integrally to the practice of dietetics or nutrition, and

(c) Is conducted by individuals who have education, training and experience in the subject matter of the program.

(4) Academic coursework.

(a) Coursework shall be eligible for credit if it:

1. Has been completed at a U.S. regionally accredited college or university; and

2. Is beyond entry-level dietetics;

(b) One (1) academic semester credit shall equal fifteen (15) continuing education hours.

(c) One (1) academic quarter credit shall equal ten (10) continuing education hours.

(d) An audited class shall equal eight (8) continuing education hours for a semester or five (5) continuing education hours for a quarter.

(5) Scholarly publications. A publication may be approved if it is published in a refereed professional journal or other publication, if the article specifically relates to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research. Continuing education credit hours for authorship of a scholarly publication may be reported using the following guidelines:

(a) Senior author: first of two (2) or more authors listed.

(b) Co-author: second of two (2) authors listed; or

(c) Contributing author: all but senior of three (3) or more authors.

(d) Research papers:

1. Single author - ten (10) hours.

2. Senior author - eight (8) hours.

3. Co-author - five (5) hours.

4. Contributing author - three (3) hours.

(e) Technical articles:

1. Single author - five (5) hours.

2. Senior author - four (4) hours.

3. Co-author - three (3) hours.

4. Contributing author - two (2) hours.

(f) Information sharing articles - one (1) hour.

(g) Abstracts:

1. Senior author - two (2) hours.

2. Co-author - one (1) hour.

(6) Poster sessions.

(a) Continuing education credit shall be approved for attending juried poster sessions that meet the criteria for appropriate subject matter established in subsection (3) of this section upon submission of the documentation required in paragraph (c) of this subsection.

(b) One (1) hour of continuing education credit shall be allowed for each hour of posters reviewed not to exceed three (3) hours in a continuing education year.

(c) The following documentation shall be submitted for approval of continuing education credit for attending juried poster sessions:

1. Certificate of attendance or completion indicating.

a. The date of the session;

b. The number of hours requested;

c. The objectives of the session; and

d. The session provider;

2. An agenda or outline of the session;

3. A program, flyer, or brochure describing the poster session;

or

4. Handouts from the poster session.

(7) Continuing education hours for presenters.

(a) Credit shall not be given for presentations to the lay public;

(b) Credit shall be allowed only once for the same presentation;

(c) The presenter shall receive twice the number of hours approved for the activity;

(d) Two (2) hours per topic shall be allowed for presenters of juried poster sessions that meet the criteria for appropriate subject matter established in subsection (3) of this section; and

(e) A copy of the presentation or poster, abstract or manuscript, and documentation of the peer review process shall be included in the licensee's or certificate holder's documentation list.

(8) Exhibits. (a) Continuing education credits may be obtained for attending exhibits that meet the criteria for appropriate subject matter established in subsection (3) of this section.

(b) One (1) hour of continuing education credit shall be allowed for each hour of exhibits reviewed not to exceed three (3) hours in a continuing education year.

(c) Documentation of attendance or completion of review of exhibits shall be submitted showing:

1. Date;

2. Provider;

3. Timeline; and

4. Content of the exhibits.

(9) Residency and fellowship programs.

(a) Fifteen (15) hours of continuing education credit shall be granted for completion of a residency or fellowship program, if the program is:

1. At the postbaccalaureate level;

2. Dietetics-related;

3. Formalized or structured experiences; and

4. Sponsored by a U.S. regionally accredited college or university of an institution accredited or approved by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the National Committee for Quality Assurance (NCQA).

(b) Documentation of the above shall be submitted and shall include:

1. Certificate of completion; and

2. Name, address, phone number, e-mail address, and fax number of the provider.

(10) Certification program.

(a) Fifteen (15) hours of continuing education credit shall be granted for completion of a certification approved by the board that:

1. Is dietetics-related;

2. Requires that candidates meet eligibility requirements; and

3. Requires that a candidate or certificate holder pass an examination to become certified initially, and to be recertified.

(b) Up to fifteen (15) hours of continuing education credit, for the exam only, may be carried over to the following year.

(c) Documentation. A document verifying the date of issue, duration of certification, and name, address, phone number, e-mail address, and fax number of the provider shall be submitted.

(11) Self study courses. (a) Fifteen (15) hours of continuing education credit shall be granted for completion of a Commission on Dietetic Registration preapproved self-study program that meets the following criteria:

1. The program shall address a single specific subject in depth;
  2. Test items shall accompany the program and be based on its content; and
  3. The program may be audio-based; computer based; printed; video-, DVD-, or CD-based or Web-based.
- (b) The following documentation shall be submitted:
1. A certificate of attendance or completion;
  2. An agenda or outline of the program; and
  3. Description of the objectives, date, timeline, and provider of the program.

Section 3. Procedures for Prior Approval of Continuing Education Activities. (1) A person seeking prior approval of a course, program or other continuing education activity shall apply to the board for approval at least sixty (60) days in advance of the commencement of the activity.

(2) The application shall state the:

- (a) Dates;
- (b) Subjects offered;
- (c) Objectives for the activity;
- (d) Total hours of instruction;
- (e) Names and qualifications of speakers; and
- (f) Other pertinent information.

(3) The board shall approve or deny timely and complete applications before the commencement of the activity.

(4) Review of programs. The board may monitor and review any continuing education program already approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted the program.

(5) Programs pertaining to the following subject areas shall require preapproval by the board:

- (a) Experiential skill development fifteen (15) hour limit;
- (b) Independent learning programs that are sponsored and related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research ten (10) hour limit;
- (c) Study groups involving nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research - ten (10) hour limit; and
- (d) Professional reading of journal articles related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research - three (3) hour limit.

Section 4. Subsequent Approval of Continuing Education Activities. (1) Individual or group educational activities for which program providers or sponsors have not requested continuing education hour approval prior to the date of the activity may be approved by the board for continuing education credit. Activities which have received prior approval may not be submitted on a subsequent approval basis.

(2) The person seeking subsequent approval of continuing education activities shall submit the following information regarding the program attended:

- (a) Dates;
- (b) Subjects offered;
- (c) Learner educational objectives for the activity and anticipated outcomes;
- (d) Total hours of instruction;
- (e) Names and qualifications of speakers;
- (f) A timing outline, including time spent for registration, introductions, welcomes, and coffee and meal breaks;
- (g) The number of continuing education hours requested; and
- (h) Any other pertinent information.

(3) A request for approval of continuing education program based on:

- (a) A program that does not require preapproval shall be submitted within sixty (60) days of completion;
- (b) Authorship of a publication shall be submitted within six (6) months of the date of publication; and
- (c) Academic coursework shall be submitted within the licen-

sure or certification year of the course completion date.

(4) Documentation of attendance at a workshop, seminar, or lecture related to nutrition and dietetic practice, nutrition and dietetic education, or nutrition and dietetic research that has not been approved by the Commission on Dietetic Registration shall be submitted within sixty (60) days of attendance.

(5) Activities which have not received prior approval may be submitted by individuals on a subsequent approval basis with rationale demonstrating continuing education value.

Section 5. Provider Preapproval. (1) A provider of a continuing education program seeking to obtain prior approval from the board for continuing education certification shall provide the following documentation to the board not less than sixty (60) days prior to the event:

- (a) Dates;
- (b) Subjects offered;
- (c) Objectives for the activity;
- (d) Total hours of instruction;
- (e) Names and qualifications of speakers; and
- (f) Other pertinent information.

(2) The board shall approve or deny timely and complete applications before the commencement of the activity.

(3) Review of programs. The board may monitor and review any continuing education program already approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted the program.

Section 6. Appeals Procedure. (1) A licensee or certificate holder may appeal decisions regarding continuing education by filing a written appeal.

(2) An appeal shall be sent to the board within thirty (30) calendar days after notification of denial and shall be considered by the board at its next scheduled meeting.

Section 7. Waiver of Continuing Education. (1) A licensee or certificate holder who is medically disabled or ill may be granted:

- (a) A waiver of the continuing education requirements; or
  - (b) An extension of time within which to complete continuing education requirements, or make required reports.
- (2) A written request for waiver or extension of time shall be:
- (a) Submitted by the licensee or certificate holder; and
  - (b) Accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time to complete them may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or certificate holder shall reapply for further waiver or extension.

Section 8 Continuing Education Requirements for Retired or Inactive Licensees. (1) A licensee who holds an inactive license is not required to obtain continuing education. However, upon application to return to active status, the licensee shall present evidence that the licensee has fulfilled the continuing education requirements for the two-year period immediately prior to the application for reinstatement.

(2) A retired licensee is not required to obtain continuing education. However, upon application to return to active status, the licensee shall present evidence that the licensee has fulfilled all past-due continuing education requirements.

CHERYL BENTLEY, Board Chair

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 12, 2009 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009 at 9 a.m. (EST) at 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend

the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Michael West, Board Counsel, Kentucky Board Licensure and Certification for Dietitians and Nutritionists, 700 Capitol Ave, Suite 118, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person:** Michael West

(1) Provide a brief summary of

(a) What this administrative regulation does: This regulation establishes continuing education requirements for the licensure and certification of dietitians and nutritionists.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 310.041(1), 310.050(3), 310.041(9)

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in clarifying continuing education requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds an alternative method for documenting CE compliance and establishes CE requirements for inactive and retired licensees.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary help licensees accurately document CE completion and clarify the amount of CE required for inactive or retired licensees.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary help licensees accurately document CE completion and clarify the amount of CE required for inactive or retired licensees

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 1,179 licensed dietitians and 74 certified nutritionists.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals identified in question (3) will more easily be able to document CE compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will be better able to provide documentation of CE compliance.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING Is tiering applied? Tiering is not applied to this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 310.041(1), 310.050(3), 310.041(9)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Licensure and Certification for Dietitians and Nutritionists (Amendment)

#### 201 KAR 33:050. Complaint procedure.

RELATES TO: KRS 310.042(2)

STATUTORY AUTHORITY: KRS 310.041(1), (3), (8)

NECESSITY, FUNCTION, AND CONFORMITY. KRS 310.042 delineates the causes for which disciplinary action may be taken against a licensee. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Definitions. (1) "Chairman" means the chairman or secretary of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (4) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 310; the administrative regulations promulgated thereunder; or any other state or federal statute or regulation.

(3) "Complaint" means any written allegation of misconduct by a credentialed individual or other person which might constitute a violation of KRS Chapter 310, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Formal complaint" means a formal administrative pleading



authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(5) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(6) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

#### Section 2. Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;
2. Organization, or
3. Entity.

(b) Shall be

1. In writing; and
2. Signed by the person offering the complaint.

(c) May be filed by the board based upon information in its possession.

(2) Upon receipt of a complaint

(a) A copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(b) Upon receipt of the written response of the individual named in the complaint, a copy of his response shall be sent to the complainant. The complainant shall have seven (7) days from the date of receipt to submit a written reply to the response.

Section 3. Initial Review. (1) The board shall establish a complaint committee composed of two (2) board members the purpose of which shall be to review complaints and information related thereto and make recommendations to the board about prospective action related to those complaints.

(2) After the receipt of a complaint and the expiration of the period for the individual's response, the complaint committee[board] shall consider the individual's response, complainant's reply to the response, and any other relevant material available. The complaint committee[board] shall determine whether there is enough evidence to warrant a formal investigation of the complaint. After making such a determination, the complaint committee shall recommend further action or disposition to the board.

(3)[(2)] If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a written report to be made to the complaint committee[board] at the earliest opportunity.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a verbal report to the complaint committee[board] of the facts regarding the complaint. The complaint committee[board] shall determine whether there has been a prima facie violation of KRS Chapter 310 or the administrative regulations promulgated thereunder and a complaint should be filed. After making such a determination, the complaint committee shall recommend further action or disposition to the board.

(2) If the board determines that a letter of complaint does not warrant issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a violation has occurred but is not serious, the board may issue a written admonishment to the licensee. A copy of the written admonishment shall be placed in

the permanent file of the licensee. The licensee shall have the right to file a response to the admonishment, in writing, within thirty (30) days of its receipt and may have it placed in his permanent file. Alternatively, the licensee may file a request for a hearing with the board within thirty (30) days of the admonishment. Upon receipt of the request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

(4) If the board determines that a letter of complaint warrants the issuance of a formal complaint against a respondent, the board shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 310.070(1), it shall:

(a) Order the individual to cease and desist from further violations of KRS 310.070(1);

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 310.070(1) with a request that appropriate action be taken under KRS 310.990; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 310.070.

Section 5. Settlement by Informal Proceedings. (1) The board through counsel may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 6. Notice and Service of Process. A notice required by KRS Chapter 310 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 7. Notification. The board shall make public:

(1) Its final order in a disciplinary action under KRS 310.042 with the exception of a written admonishment issued pursuant to Section 4(3) of this administrative regulation; and

(2) An action to restrain or enjoin a violation of KRS 310.070(1).

CHERYL BENTLEY, Board Chair

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 12, 2009 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009 at 9 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON. Michael West, Board Counsel, Kentucky Board Licensure and Certification for Dietitians and Nutritionists, 700 Capitol Ave, Suite 118, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael West

(1) Provide a brief summary of  
(a) What this administrative regulation does: This regulation establishes the complaint procedure for the licensure and certification of dietitians and nutritionists.

(b) The necessity of this administrative regulation. This regulation is necessary to implement the provisions of KRS 310.041(1), (3), (8).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in clarifying complaint procedure.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment reflects the adoption of a complaint committee process.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary provide greater due process to licensees who receive complaints against them.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity as the authorizing statute that gives the board the ability to promulgate regulations generally.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary provide greater due process to licensees who receive complaints against them.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 1,179 licensed dietitians and 74 certified nutritionists.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals identified in question (3) will be provided greater due process by the adoption of a complaint committee process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals identified in question (3) will be provided greater due process by the adoption of a complaint committee process.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 310.041(1), (3), (8)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(Amendment)

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), [150.600(1)] 150.990[150 C.F.R. Parts 20, 21]

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. [Parts] 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions (1) "Dark goose" means a Canada goose, white-fronted goose, or brant

(2) "Light Goose" means a snow goose or Ross's goose.

(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60

(4) "Waterfowl" is defined in KRS 150.010(40).

Section 2 (1) Except as authorized by 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Season dates (1) Duck, coot, and merganser:

(a) Beginning on Thanksgiving Day for four (4) consecutive days; and

(b) For fifty-six (56) consecutive days ending on the last Sunday in January of the following year.

(2) Canada goose:

(a) Eastern, Pennyriple, and Western Goose Zones, beginning on November 23 for seventy (70) consecutive days

(b) Northeast Goose Zone,

1. Beginning on the Saturday following Christmas for nine (9) consecutive days; and

2. Beginning on January 19 for thirteen (13) consecutive days.  
 (3) White-fronted and brant geese, beginning on November 23 for seventy (70) consecutive days.

(4) Light goose:

(a) Beginning on November 23 for seventy (70) consecutive days; and

(b) Light Goose Conservation Order season:

1. Western Duck Zone: from February 1 through 5 and February 8 through March 31.

2. Eastern Duck Zone from February 1 through March 31.

(5) A person shall not hunt a light or dark goose in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. In the Ballard Reporting Area that is established in 301 KAR 2 224:

(1) A person hunting waterfowl shall

(a) Hunt from a blind unless hunting in flooded, standing timber;

(b) Not hunt from or establish a blind:

1. Within 100 yards of another blind; or

2. Within fifty (50) yards of a property line; and

(c) Not possess more than one (1) shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in 301 KAR 2:221, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks: The daily limit shall be six (6), that shall not include more than:

a. Four (4) mallards;

b. One (1) hen mallard;

c. Three (3) wood ducks;

d. One (1) black duck;

e. Two (2) redheads;

f. One (1) pintail;

g. Two (2) scaup;

h. One (1) mottled duck; or

i. One (1) canvasback.

(2) Coot: Daily limit fifteen (15).

(3) Merganser: Daily limit five (5), which shall not include more than two (2) hooded mergansers.

(4) Dark goose: Daily limit six (6), that shall not include more than:

(a) Two (2) Canada geese;

(b) Two (2) white-fronted geese; or

(c) Two (2) brants.

(5) Light goose: Daily limit twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.

(6) The possession limit shall be double the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) 2 p.m. in the Northeast Goose Zone during a Canada goose season;

(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222; or

(3) One-half (1/2) hour after sunset if hunting light goose during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits (1) Season dates:

(a) Light goose: November 5 through January 31;

(b) Light Goose Conservation Order season:

1. Western Duck Zone: from February 1 through February 5 and February 8 [9] through March 31.

2. Remainder of state: from February 1 through March 31; and

(c) Other waterfowl: November 5 through January 31.

(2) Daily limit: three (3) waterfowl, except that there shall not be a limit on light goose during the Light Goose Conservation Order season.

(3) Possession limit: six (6) waterfowl, except that there shall

not be a possession limit on light goose during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order season. (1) A person hunting light goose during the Light Goose Conservation Order season shall first obtain a free permit from the department by contacting the Ballard WMA office.

(2) A person hunting light goose during the Light Goose Conservation Order season shall submit a Light Goose Conservation Order report to the department by April 10 [and 150-600(1) authorize the department to establish waterfowl season dates and limits. This administrative regulation establishes the limits and dates with in federal waterfowl hunting frameworks established by 50 C.F.R. Part 20-EO 2008-516, effective June 16, 2008 reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Conservation Snow Goose Order" is defined by 50 C.F.R. Parts 20 and 21.

(2) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(3) "Snow goose" means a snow goose or Ross' goose.

(4) "Waterfowl" is defined in KRS 150-010(40).

Section 2. (1) Except as authorized by 301 KAR 2 222, 301 KAR 2 225, or 301 KAR 2 226, a person shall not take waterfowl except on the dates and within the limits prescribed by this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2 224.

Section 3. Gun and Archery Season Dates and Bag Limits for Duck, Coot, and Merganser. (1) Season dates:

(a) All ducks except for canvasback, November 27 through January 25.

(b) The season on canvasback shall be closed.

(2) The gun and archery daily bag limit shall be:

(a) Six (6) ducks, which shall not include more than:

1. Four (4) mallards, which shall not include more than one (1) hen mallard;

2. Three (3) wood ducks;

3. One (1) black duck;

4. Two (2) redheads;

5. One (1) pintail;

6. Scaup;

a. One (1) scaup from November 27 to January 5;

b. Two (2) scaup from January 6 to January 25;

7. Three (3) mottled ducks.

(b) Fifteen (15) coots.

(c) Five (5) mergansers, which shall not include more than two (2) hooded merganser.

(3) The possession limit shall be double the daily bag limit.

Section 4. Gun and Archery Seasons Dates and Bag Limits for Goose. (1) White-fronted goose and brant season dates: November 23 through January 31.

(2) Snow goose season dates:

(a) Regular season: November 23 through January 31.

(b) Conservation Snow Goose Order;

1. The Western Duck Zone: February 1 through February 6 and February 9 through March 31.

2. Rest of state: February 1 to March 31.

(3) Canada goose season dates shall be from the starting date listed below through January 31.

(a) The Eastern Goose, Pennyroyal Coalfield, West-Central Kentucky, and Western Goose Zones shall be open on November 23; and

(b) There shall be a split season in the northeast Kentucky goose zone:

1. December 27 through January 4; and

2. January 10 to January 31.

(4) A person shall not goose hunt in:

(a) The areas of Laurel River Lake as posted by sign; and

(b) Cave Run Lake and the public land inside a boundary

formed by Highways 801, 1274, 36, 211, US 60 and Highway 826.

(5) The gun and archery daily bag limit shall be:

(a) Six (6) dark geese, to include no more than:

1. Two (2) Canada geese;

2. Two (2) white-fronted geese; and

3. Two (2) brant.

(b) Twenty (20) snow geese; except there shall be no daily limit on snow geese during the Conservation Snow Goose Order.

(6) The possession limit shall be double the daily bag limit, except that there shall not be a possession limit on snow geese.

**Section 5. Shooting Hours**—A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) 2 p.m. in the Northeast Kentucky Hunt Zone during a Canada goose season;

(2) Sunset in the remainder of the state, except as specified in 301 KAR 2-222; or

(3) One-half (1/2) hour after sunset while hunting snow geese during the Conservation Snow Goose Order.

**Section 6. Falconry Waterfowl Season and Limits.** (1) Season dates:

(a) Snow geese: November 5 through January 31.

(b) Conservation Snow Goose Order:

1. Western Duck Zone: February 1 through February 6 and February 9 through March 31.

2. Remainder of state: February 1 through March 31.

(c) Canada Goose season: November 5 through February 1.

(d) Other waterfowl: November 5 through February 1.

(2) Daily limit: three (3) waterfowl, except that there shall be no limit on snow geese during the Conservation Snow Goose Order.

(3) Possession limit: six (6) waterfowl; except that there shall be no limit on snow geese during the Conservation Snow Goose Order.

**Section 7. Permit for Conservation Snow Goose Order**—(1) A person hunting snow geese during the Conservation Snow Goose Order shall first obtain a free permit from the department by contacting the Ballard WMA office at (270) 224-2244.

(2) A hunter during the Conservation Snow Goose Order shall submit a Conservation Snow Goose Order report by April 10.]

BENJY KINMAN, Deputy Commissioner

For JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: October 26, 2009

FILED WITH LRC: November 3, 2009 1 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2009, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by January 4, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative

regulation establishes waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2009–10 waterfowl hunting seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates and bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing waterfowl hunting seasons and area-specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with national and international management goals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: Each fall the USFWS issues a federal mandate establishing the framework for waterfowl hunting seasons. This amendment reflects the federal mandate regulations for waterfowl hunting under guidance of the Migratory Bird Treaty Act. Changes in the duck season dates are the result of a calendar shift. Federal frameworks permit a maximum 60-day season in the Mississippi Flyway. Kentucky will split duck season in 2009, using four days to accommodate hunters during the Thanksgiving weekend with the remaining 56 days open through the last Sunday in January as specified in the federal frameworks. In 2009, the season on canvasback ducks will once again be open, and the bag limit on scaup ducks will be two (2) birds per day for the entire duck season.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for waterfowl and migratory game birds.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's Web Site. Hunters will have to review the hunting guide or website for the updated information to hunt legally during the specified season.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt waterfowl in the state.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations to restrict the methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. States must adhere to 50 C.F.R. Parts 20 and 21 that establishes the U.S. Fish and Wildlife Service's Federal migratory bird hunting frameworks.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fishery, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds be-

fore, during and after periods open for hunting

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory limits that a state may permit. States are permitted to be more restrictive but not more liberal in their respective regulations. State waterfowl population migration and winter management objectives necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's waterfowl hunters. The season on snow geese is shorter than the federal framework because migration patterns for this species result in a paucity of birds early in the federal framework. The Canada goose season in the Northeast Goose Zone is shorter than is permitted in the rest of the state because of the desire to maintain a huntable population in that region of the state.

#### TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

#### 301 KAR 2:222. Waterfowl hunting requirements on public lands.

RELATES TO: KRS 150.010(40), [450.025(1);] 150.305(1), 150.330, 150.340(1), (3), [450.600(4);] 150.990[50 C.F.R. Parts 20, 21]

STATUTORY AUTHORITY: KRS 150.025(1), 150.360[(a), (b);] 450.340, 150.600(1), 50 C.F.R. [Parts] 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes [and 450.600(1) authorize] the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land [establish statewide waterfowl hunting requirements and to specify seasons and other requirements on Wildlife Management Areas and other areas. KRS 450.340 authorizes the department to establish bag limits for waterfowl.] This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21 [site specific restrictions on areas in Kentucky regarding waterfowl requirements to optimize public use within sound waterfowl conservation practices EO 2008-516, effective June 16, 2008 reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet].

Section 1. Definitions. (1) "Blind" means a concealed enclosure, pit, or boat.

(a) A concealed enclosure;

(b) A pit; or

(c) A boat.

(2) "Blind site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers [identified by the department or approved by the U.S. Army Corps of Engineers where hunting is permitted].

(3) "Department blind" means a permanently fixed blind structure built by the department.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) [(4)] "Party" means a person hunting alone or two (2) to four (4) people who share a blind or blind site.

(6) [5]:

(a) A person hunting alone; or

(b) From two (2) to four (4) persons who share a blind or blind site.

(5) "Permanent blind" means a blind left in place by a waterfowl hunter longer [more] than twenty-four (24) hours.

(7) [(6)] "Regular waterfowl season" means the open waterfowl

season that does not include the Light Goose Conservation Order for the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221[late migratory bird hunting seasons referred to in 50 C.F.R. Part 20.

(7) "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.

(8) "Waterfowl" is defined in KRS 150.010(40).

(9) "Wildlife Management Area" or "WMA" means a tract of land:

- (a) Controlled by the department through ownership, lease, license, or cooperative agreement; and
- (b) that has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Shot requirements. A person hunting waterfowl [hunter] shall not use or possess[carry] a shotgun shell:

- (1) Longer than three and one-half (3 1/2) inches; or
- (2) Containing [shot]:
  - (a) Lead shot[Made of lead],
  - (b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
  - (c) Shot larger than size "T."

Section 3. [In the Ballard Reporting Area, as described in 301 KAR 2:224:

- (1) A waterfowl hunter shall:
  - (a) Hunt from a blind unless hunting in flooded, standing timber;
  - (b) Not hunt from or establish a blind:
    - 1. Within 100 yards of another blind; or
    - 2. Within fifty (50) yards of a property line; and
  - (c) Not possess more than one (1) shotgun while in a blind.
- (2) The requirements of subsection (1) of this section shall not apply when the Conservation Snow Goose Order is the only waterfowl season open, excluding falconry seasons.

Section 4. (1) Except as specified in this section or in Section 5 of this administrative regulation, on a Wildlife Management Area:

- (a) A person hunting waterfowl [hunter] shall not establish or hunt from:
  - 1. A permanent waterfowl blind; or
  - 2. A waterfowl blind within 200 yards of:
    - a. Another waterfowl blind; or
    - b. A waterfowl refuge;
- (b) A person shall not hunt in a designated recreation area or access point;
- (c) More than four (4) persons shall not occupy a waterfowl blind; and
- (d) A hunter shall remove decoys and personal items[effects from the Wildlife Management Area] daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt[; at his or her own risk].
- (2) A person wanting[ wishing] to establish or use a permanent waterfowl blind or blind site on Lake Barkley [Lake], Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug[Deung] Travis Wildlife Management Areas:
  - (a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;
  - (b) May designate one (1) other person as a partner; and
  - (c) Shall not hold more than one (1) permit per area[; and
  - (d) Shall participate in a drawing for a blind permit on the Barkley, Barren, Green, Paintsville, Sloughs, or Deung-Travis Wildlife Management Areas:
    - 1. At the time of the drawing, the hunter shall possess a valid hunting license, a Kentucky waterfowl permit and a federal waterfowl permit; and
    - 2. Shall be eighteen (18) years of age or older.

(3) A person who participates in a drawing for a WMA blind permit shall:

- (a) Be at least eighteen (18) years of age; and
- (b) Possess:
  - 1. A valid Kentucky hunting license;
  - 2. A Kentucky waterfowl permit; and

3 A federal duck stamp.

(4) The holder of a waterfowl blind permit shall:

- (a) Construct or establish the[his or her] blind or blind site before November 20 or forfeit the permit;
- (b) Not lock a waterfowl blind; and
- (c) Remove the[Unless an extension of time is granted, remove his] blind and materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department based on weather or water level conflicts.
- (5)[(4)] A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served[first-serve] basis.
- (6)[(5)] A waterfowl blind restriction established[specified] in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4 [6. On a] Wildlife Management Area Requirements (1) the regular waterfowl season provisions[-(1)(a) Statewide waterfowl seasons] shall apply, as established in 301 KAR 2:221, except as established[unless otherwise stated] in this section.

(2) The provisions of this section[(b) If specific hunting dates and times are given in this section, a person shall not hunt waterfowl except on those dates and times.

(c) Paragraph (b) of this subsection] shall not apply to a waterfowl hunting season that opens prior to[opening before] October 15, as established in 301 KAR 2:225.

(3)[(2)] A person shall not:

- (a) Hunt on an area [or portion of an area] marked by a sign as closed to hunting;
- (b) Enter an area [or a portion of an area] marked by signs as closed to public access; or
- (c) Hunt a species on an area [or a portion of an area] marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

- 1. The daily bag limit for ducks is greater than three (3); and
- 2. The daily bag limit for Canada goose is greater than or equal to two (2);

(b) At least one (1) person in a waterfowl blind shall be eighteen (18) years of age or older if hunting in a department waterfowl blind at Ballard or Boatwright WMA.

(5) At Ballard WMA:

(a) The duck, coot, and merganser season shall be December 9 through January 31.

(b) The goose season shall be December 9 through January 31.

(c) Youth waterfowl season shall be the first full weekend in February.

(d) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Day, or New Year's Day.

(e) A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 6 of this administrative regulation;

2. Use a gun if using department-supplied transportation to and from a waterfowl blind;

3. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard Wildlife Management Area from October 15 through March 15; and

4. Exit the area by 2 p.m. during the regular waterfowl season, except as authorized by the department.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

- 1. Not hunt on Monday, Tuesday, Christmas Day, or New Year's Day;
- 2. Obtain a daily check-in card by 8 a.m. before entering the area from December 9 through January 31.
- 3. Check out the same day by;

a. Check station prior to 8 a.m.; or  
b. Depositing the check-in card at a department-designated drop point after 8 a.m.

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting.

(c) A department blind or blind site shall be assigned through a daily drawing through January 31.

(d) A blind or blind site shall be offered to another hunter on a first-come, first-served basis, if the blind or blind site has not been assigned during the daily drawing.

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season.

(f) A boat blind shall not be permitted in flooded timber, except:  
1. During periods of flood if no other access is possible; or  
2. A mobility-impaired hunter may hunt from a boat, and the 200 yard minimum distance restriction, as established in this section, shall not apply to a person assisting a mobility-impaired hunter.

(g) A party shall only hunt waterfowl:

1. From a department blind, or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a blind site in December and January during the regular waterfowl season.

(h) On the Peal unit:

1. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

2. More than four (4) parties shall not hunt at the same time on Fish Lake.

3. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;

4. A party shall not hunt waterfowl except within twenty-five (25) feet of a blind site during December and January.

(i) On the Swan Lake Unit:

1. A person shall not hunt waterfowl from November 26 through December 6;

2. The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2-221; and

3. Blind restrictions shall not apply to the Light Goose Conservation Order season.

(7) Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a blind site;

(b) Waterfowl refuge areas:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile fifty-one (51), at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile fifty-five and five-tenths (55.5) shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(8) Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(9) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(10) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(11) Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the

area.

(12) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person hunting waterfowl shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(c) On Forked Lake, Indian Camp Lake, Fish Lake, Number Four Lake, and Black Lake, all waterfowl hunting after November 1:

1. Shall be from blind sites assigned by a random preseason drawing; and

2. Shall be within ten (10) yards of a blind site, including periods of Mississippi River flooding.

(13) Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site manna;

(b) From the shore of Camp Webb,

(c) On Deer Creek Fork; and

(d) Within three-quarters (3/4) of a mile from the dam.

(14) Green River Lake WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(15) Kaler Bottoms WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(16) Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys.

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A person hunting waterfowl shall remove decoys and personal items daily.

(17) Obion Creek WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(18) Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15, except for those drawn for a quota deer hunt.

(19) Peabody WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and

2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(20) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(21) Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.

(c) On the Grassy-Pond Powell's Lake Unit, a person hunting



waterfowl:

1. Shall hunt:

- a. From a department blind; or
- b. From a blind within twenty-five (25) yards of a blind site.

2. Shall remove decoys and personal items from the area on a daily basis.

(d) On the Jenny Hole-Highlands Creek Unit, a person hunting waterfowl

1. Shall hunt:

- a. From a department blind;
- b. From a blind within twenty-five (25) yards of a blind site; or
- c. From a blind that is no closer than 200 yards of another hunting party.

2. Shall remove decoys and personal items from the area on a daily basis.

(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(f) A person hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from a blind assigned by the department through a drawing as established in Section 6 of this administrative regulation.

2. May occupy a permitted blind if not claimed by the permittee within one (1) hour before sunrise.

3. Shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-five (25) if

(a) The daily bag limit for ducks is greater than three (3); and

(b) The daily bag limit for Canada goose is greater (less) than or equal to two (2);

4. Shall be accompanied by an adult if under eighteen (18) years of age; and

5. The waterfowl blind for a mobility-impaired person shall be open to the public if the permit holder or another mobility-impaired person has not claimed the blind on that day by one (1) hour before sunrise.

(g) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except for:

1. Waterfowl from November 1 through March 15, and

2. The modern gun deer season.

(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15,

(22) South Shore WMA.

(a) The WMA shall be closed to hunting from November 15 through January 15, except for quota waterfowl hunting and dove hunting.

(b) The quota hunt shall require advance application and selection.

(c) A hunter shall use a department blind.

(d) A department blind shall be allocated by a preseason drawing.

(23) Taylorsville Lake WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(24) Yatesville Lake WMA. The following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(25) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 5 (1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply through the vendor supplied by the department by calling 1-877-598-2401

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt may bring up to three (3) additional hunters.

(3) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of Barren River, Grayson Lake, Greenbo Lake, Lake Barkley, Lincoln Homestead, Paintsville Lake, Pennynile Lake, and Yatesville Lake State Parks.

(2) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days that the park office is not open.

(3) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(4) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days that the park office is not open.

(5) Statewide waterfowl hunting requirements shall apply.

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with the youth-mentor hunt.

(3) The date of each hunt shall be published in the annual Waterfowl Hunting Guide.

(4) A youth or mobility-impaired person shall register in advance and carry a department provided postcard notification on the day of the hunt.

(5) A mobility-impaired person shall also submit a mobility-impaired access permit.

(6) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(7) Each youth shall not be accompanied by more than one (1) adult.

(8) One (1) adult may accompany two (2) youths.

(9) A mobility-impaired hunter may be accompanied by no more than one (1) assistant who may also hunt.

(10) A person shall hunt from an established blind and shall not change blinds.

(11) A blind shall not be used by more than four (4) hunters.

(12) A person shall only discharge a firearm from a blind.

(13) A person shall not possess more than fifteen (15) shotshells.

(14) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(15) A person shall encase a firearm if traveling to and from a blind.

(16) Hunting shall end at noon, and hunters shall exit the area by 1 p.m.

(17) All decoys and equipment shall be removed at the end of each day's hunt.

(18) A hunter shall report harvest by depositing a completed hunt permit at the designated location. (3) Wildlife management areas in Ballard County.

(a) Sliding shell limit scale.

1. The shell limit shall be twenty-five (25) when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2); and

2. The shell limit shall be fifteen (15) when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2);

(b) At least one (1) person in a blind shall be eighteen (18) years of age or older while hunting from a department blind at Ballard WMA or Boatwright WMA.

(c) At Ballard Wildlife Management Area:

1. Waterfowl hunting shall be permitted during an open waterfowl season occurring before October 15.

2. The duck, coot, and morganer season shall be December 3 through January 25.
3. The goose season shall be December 3 through January 31.
4. Youth waterfowl season shall be the first weekend in February.
5. A waterfowl hunter shall not hunt on a Monday, Tuesday, Christmas Day, or New Year's Day.
6. A waterfowl hunter shall:
  - a. Apply in advance in accordance with Section 6 of this administrative regulation;
  - b. Case his gun while using department-supplied transportation to and from a blind;
  - c. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15; and
  - d. Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.
- (d) At Boatwright Wildlife Management Area, including the Olmsted, Peal and Swan Lake units:
  1. Each party shall:
    - a. Not hunt on a Monday, Tuesday, Christmas Day or New Year's Day;
    - b. Have in their possession, by 8 a.m. during the December 3 through January 31 segment of the waterfowl season, a daily check-in card before entering the area to set a blind, place decoys, or hunt; and
    - c. Check out the same day by:
      - (i) Visiting a department-designated check station prior to 8 a.m.; or
      - (ii) Depositing a card at a department-designated drop point after 8 a.m.
  2. Duck season shall be open one-half (1/2) hour before sunrise to sunset Thanksgiving Day for four (4) consecutive days on portions of Boatwright Wildlife Management Area open to hunting.
  3. A department blind or blind site shall be assigned through a daily draw from December 3 through January 31.
  4. A blind or blind site shall be offered to another hunter on a first come, first served basis, if the blind or blind site has not been assigned during the draw that day.
  5. Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.
  6. Beat blinds shall not be permitted in flooded timber, except during periods of flood when no other access is possible and except mobility-impaired hunters may hunt from a beat, with no set-back restriction for those in the party assisting with the hunt. When beat blinds are permitted, there shall be a 200-yard minimum distance between beat blinds.
  7. A party shall only hunt waterfowl from a permanent department blind or layout blind(s) set in such a manner that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party; or
  8. A party shall only hunt waterfowl from a blind site or within 200 yards of a blind site assigned by the department during the December and January segment of the waterfowl season.
  9. On the Peal unit:
    - a. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;
    - b. More than four (4) parties shall not hunt at the same time on Fish Lake;
    - c. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;
    - d. A party shall not hunt waterfowl except from within twenty-five (25) feet of a blind site assigned by the department during December and January.
  10. On the Swan Lake Unit, a person shall not hunt duck, coot, morganer, or goose other than a Canada Goose except from a blind or blind site assigned by the department and unless:
    - a. The season for those species is open; and
    - b. The season for Canada Goose is also open.
  - e. Except, that area open for hunting during the Canada goose season shall also be open during the Snow Goose Conservation Order without blind restrictions.
  - (4) Barkley Lake Wildlife Management Area.

- (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
- (b) A person shall establish a permanent blind within ten (10) yards of his or her blind site within:
  1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.
  2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.
- (c) The following refuge areas are closed to the public:
  1. From November 1 through February 15 within an area west of the main river channel between river mile 61 (Hayes Landing Light) and the TVA power transmission lines at river mile 55.5.
  2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.
- (d) From October 15 through March 15, a person shall not hunt:
  1. Within 200 yards of, or
  2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.
- (5) Barron River Lake Wildlife Management Area:
  - (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
  - (b) A waterfowl hunter:
    1. May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and
    2. Shall not use a breech-loading firearm elsewhere on the area.
  - (6) Buckhorn Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.
  - (7) Miller Welch Central Kentucky Wildlife Management Area. A person shall not hunt waterfowl from October 15 through January 14.
  - (8) Cumberland Lake Wildlife Management Area. The following sections shall be closed to the public from October 15 through March 15:
    - (a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.
    - (b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.
    - (9) Daniel Boone National Forest Pioneer Weapons Wildlife Management Area. A waterfowl hunter:
      - (a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and
      - (b) Shall not use a breech-loading firearm elsewhere on the area.
    - (10) Doug Travis WMA.
      - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
      - (b) Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.
      - (c) On Forked Lake, Indian Camp Lake, Fish Lake, Number Four Lake, and Black Lake, all waterfowl hunting after November 1:
        1. Shall be from blind sites assigned by a random pre-season draw.
        2. Shall be within ten (10) yards of a blind site, even during periods of Mississippi River flooding.
  - (11) Grayson Lake Wildlife Management Area. A person shall not hunt waterfowl:
    - (a) Within the no-wake zone at the dam site marina;
    - (b) From the shore of Camp Webb;
    - (c) On Deer Creek Fork; and
    - (d) Within three-quarters (3/4) of a mile from the dam.
  - (12) Green River Lake Wildlife Management Area.
    - (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
    - (b) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
  - (13) Kaler Bottoms Wildlife Management Area. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
  - (14) Land Between the Lakes.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;
2. The eastern one-third (1/3) of Smith Bay; and
3. The eastern two-thirds (2/3) of Duncan Bay.

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and
2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat over a flooded portion of Land Between the Lakes when the lake level is above elevation 350.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A waterfowl hunter shall remove decoys and personal effects daily.

(15) Nolin River Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(16) Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.

(17) Ohio River Waterfowl Refuge.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing at approximately river mile 944.5.

(b) Stewart Island shall be closed to the public from October 15 through March 15, except for quota deer hunting.

(18) Peabody Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:

1. Sinclair Mine, as bounded by Hwy 176, the haul road, and Goose Lake Road as posted by signs; and

2. Homestead, as bounded by Cool Spring Wysex Road, H2 Road, H1 Road, and H6 Road, and areas posted by signs.

(19) The main block of Robinson Forest Wildlife Management Area shall be closed to waterfowl hunting.

(20) Sloughs Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) Waterfowl hunters shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(c) On the Grassy Pond Powell's Lake Unit, a waterfowl hunter:

1. Shall use a permanent blind provided by the department;

2. Shall remove decoys and personal effects from a blind or the vicinity of a blind daily; and

3. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(d) On the Jenny Hole Highlands Creek Unit, a waterfowl hunter:

1. Shall not establish or hunt from a blind closer than 200 yards from another hunting party; and

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

3. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(f) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation;

2. May occupy a blind not claimed by the permittee one (1) hour before sunrise;

3. Shall be limited to twenty-five (25) shells when the daily bag limit for ducks is greater than three (3) and the Canada goose limit is greater than or equal to two (2);

4. Shall be limited to fifteen (15) shells when the daily bag limit for ducks is less than or equal to three (3) and the Canada goose limit is less than or equal to two (2);

5. Shall be accompanied by an adult if under eighteen (18) years of age; and

6. The waterfowl blind for mobility-impaired persons will be open to the public only if the permit holder or another mobility-impaired person has not shown up to hunt on that day by one (1) hour before sunrise.

(g) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except waterfowl from November 1 through March 15.

(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(21) South Shore Wildlife Management Area.

(a) Closed to all hunting November 15 through January 30, except quota hunt waterfowl and dove hunting.

(b) The quota hunt requires advance application and selection.

(c) Hunters shall use department blinds.

(d) Department blinds are allocated by a preseason draw. Applicants shall mail a three (3) by five (5) white index card with hunter information in an envelope to Grayson Lake WMA post marked between November 1 and November 15.

(22) Taylorsville Lake Wildlife Management Area. Shooting hours shall be thirty (30) minutes before sunrise until 2 p.m.

(23) Yatesville Lake Wildlife Management Area. The Greenbrier Creek Branch of Yatesville Lake, and Yatesville Lake, including all of the islands, north of the mouth of the Greenbrier Creek Branch shall be closed to all waterfowl hunting.

(24) Yellowbank Wildlife Management Area. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 6. (1) A person wishing to apply to hunt waterfowl on Ballard or Sauerheber Unit of Sloughs Wildlife Management Areas shall:

(a) Apply to the vendor supplied by the department by calling (877) 598-2401;

(b) Register between September 1 and September 30, and

(c) Pay a three (3) dollar application fee for each application.

(2) A person shall not apply more than one (1) time for each hunt.

(3) Each hunter drawn may bring up to three (3) additional hunters.

(4) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs in which hunter numbers are regulated as part of a preseason or daily drawing.

Section 7. State Parks. (1) There shall be no waterfowl hunting on state parks except as specified in the subsection (2) of this section.

(2) State Parks.

(a) There shall be an open waterfowl hunt December 13 through January 31 on designated areas of Barren River, Grayson Lake, Greenbo Lake, Lake Barkley, Lincoln Homestead, Paintsville Lake, Pennyville Lake, and Yatesville Lake State Parks.

(b) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days in which the park office is not open.

(c) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(d) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days in which the park office is not open.

(e) Statewide waterfowl hunting requirements apply.

~~Section 8 – Mentor Waterfowl Hunts at Minor Clark and Peter W. Pfeiffer Fish Hatcheries – (1) There shall be youth waterfowl mentor hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries.~~

~~(2) Dates shall be determined and published in the current Waterfowl Hunting Guide.~~

~~(3) Youths shall register in advance and carry postcard notification for the day of the hunt.~~

~~(4) Youths shall be accompanied by an adult eighteen (18) years or older.~~

~~(5) One (1) youth shall not be accompanied by more than one (1) adult.~~

~~(6) One (1) adult may accompany two (2) youths.~~

~~(7) Hunting shall only be permitted from established blinds and hunters shall not change blinds.~~

~~(8) Four (4) hunters shall be permitted per blind.~~

~~(9) Hunters may only discharge firearms from the blind.~~

~~(10) Hunters may only have fifteen (15) shotshells per hunter.~~

~~(11) Hunters shall immediately retrieve downed birds. Chasing or harassing waterfowl outside the blinds is strictly prohibited.~~

~~(12) Firearms shall be encased when traveling to and from the blind.~~

~~(13) Hunting shall end at noon and hunters shall be off the premises by 1 p.m.~~

~~(14) All decoys and equipment shall be removed at the end of each day's hunt.~~

~~(15) Hunters shall report harvest by dropping hunt permit at designated location.]~~

BENJY KINMAN, Deputy Commissioner

For JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: October 26, 2009

FILED WITH LRC: November 3, 2009 at 1 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2009, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by January 4, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of.

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the U.S. Fish and Wildlife Service.

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2009-2010 waterfowl hunting requirements in accordance with the U.S. Fish and Wildlife Service and Kentucky Department of Fish and Wildlife Resources management objectives.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates, bag limits and other hunting requirements on public lands managed for waterfowl and public hunt-

ing opportunity by the department.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing waterfowl hunting seasons and area-specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with state, national and international management goals for this important natural resource.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: This is an amendment to an existing regulation. Each fall the U.S. Fish and Wildlife Service issues a federal mandate establishing frameworks for waterfowl hunting seasons in the United States. This amendment reflects the federal mandate regulations for waterfowl hunting within the requirements of the Migratory Bird Treaty Act. This amendment will allow hunters who are drawn to hunt at Sloughs WMA the ability to hunt waterfowl within 25 yards of certain full-season blind locations. It also opens up the Minor Clark Hatchery youth and mentor quota hunt drawings to mobility-impaired individuals.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the U.S. Fish and Wildlife Service and continue efforts to increase quality hunting opportunity for waterfowl and migratory game birds.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new of by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will have to review the hunting guide or website for the updated information to hunt legally during the specified season.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt waterfowl in the state.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in no additional cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations to restrict the methods for the taking of wildlife.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-)

Expenditures (+/-):

Other Explanation:

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's waterfowl hunters. The greatest wintering and migrating waterfowl concentrations are located on public wetlands managed by KDFWR. KDFWR imposes more restrictive hunting regulations on these lands in effort to meet international waterfowl management objectives while still providing quality hunting opportunity consistent with waterfowl population objectives.

tives while still providing quality hunting opportunity consistent with waterfowl population objectives.

## GENERAL GOVERNMENT

## Department of Agriculture

Office of State Veterinarian, Division of Animal Health  
(Amendment)

## 302 KAR 20:040. Entry Into Kentucky.

RELATES TO KRS Chapter 257, 9 C.F.R. Chapter 1 parts 77, 78

STATUTORY AUTHORITY: KRS 246.295, 257.030, 257.070  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.070 requires that importation of animals into Kentucky complies with administrative regulations promulgated by the board. KRS 257.030 authorizes the board to establish necessary quarantines and other measures to control the movement of animals into, through, or within Kentucky. This administrative regulation establishes health requirements for entry, including entry for sales or exhibition, for livestock and animals into Kentucky.

Section 1. General Provisions. (1) All animals entering Kentucky shall be subject to the requirements established in 302 KAR 20.020.

(2) All animals shall be accompanied by a Certificate of Veterinary Inspection (CVI) or other official movement document except for exemptions listed under each species section of this administrative regulation or 302 KAR 20:065. Examples of an official movement document shall include a way bill with a permit number or Federal Movement Form VS 9-3 or VS 1-27.

(3) If an entry permit is required by this administrative regulation, it shall be obtained by calling OSV at (502) 564-3956, Monday through Friday, 8 a.m. EST to 4 30 p.m. EST. The permit number shall be recorded on the CVI or other required species specific document obtained pursuant to this subsection.

(4) If the state veterinarian determines based on an epidemiological evaluation of current disease risks that additional requirements are needed to prevent the introduction or spread of disease, the OSV shall direct a person to comply with the additional entry requirements. The notification of additional requirements shall be written or given orally and confirmed in writing.

(5) All required tests shall be conducted by a state-federal approved laboratory as defined by 9 C.F.R. Chapter 1.

(6) A CVI for entry shall:

(a) Be valid for thirty (30) days from the date of issue;

(b) Become void upon arrival at the designated destination, except for exhibition animals which may return home within thirty (30) days of the original issue date; and

(c) State a valid destination address or PIN.

Section 2. Cattle or Other Bovine Species. (1) General requirements for entry.

(a) Cattle or other bovine species for exhibition, breeding, or feeding purposes, or for sale purposes except as defined in paragraph (b) of this subsection shall meet the requirements established in subsections (2) and (3) of this section.

(b) Cattle or other bovine species imported directly to a recognized slaughter center or a state-federal approved stockyard shall meet the requirements established in subsections (3) and (4) of this section.

(c) Cattle or other bovine species imported to a Kentucky premises from an out of state federally approved livestock market shall meet the requirements established in subsections (3) and (4)(d) of this section

(2) Certificate of Veterinary Inspection and Entry Permit.

(a) All cattle or other bovine species entering the state for sale, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) An entry permit shall be required prior to entry for all cattle or other bovine species except steers, spayed heifers, cattle or other bovine species presented for exhibition only. The permit number shall be recorded on the CVI.

(3) Specific diseases.

(a) Brucellosis.

1. The importation of cattle or other bovine species shall comply with 9 C.F.R. Part 78.

2. Animals from class free states shall be exempt from testing.

3. Animals originating from a brucellosis certified herd shall be exempt from testing. The herd certification number and date of last herd test shall be indicated on the CVI.

(b) Tuberculosis.

1. The importation of cattle or bison shall comply with 9 C.F.R. Part 77.

2. Animals from class free states shall be exempt from testing.

3. Animals originating from a tuberculosis accredited herd shall be exempt from testing. The herd accreditation number and date of last herd test shall be indicated on the CVI.

(c) Scabies. Cattle or other bovine species affected with or exposed to scabies or from an area quarantined because of scabies shall not be eligible for entry into Kentucky except:

1. In accordance with 9 C.F.R. Part 73 of the USDA APHIS VS; and

2. If a written permit from the State Veterinarian or an authorized representative is obtained pursuant to 9 C.F.R. Part 73.

(d) Ticks. Cattle or other bovine species from a state-federal tick quarantined area, as defined by 9 C.F.R. Part 72, shall not be eligible for entry into Kentucky except:

1. In accordance with 9 C.F.R. Part 72 of the USDA APHIS VS; and

2. If a written permit from the State Veterinarian or an authorized representative is obtained pursuant to 9 C.F.R. Part 72.

(e) Johne's Disease. The importation of cattle or other bovine species shall comply with 9 C.F.R. Part 80.

(4) Other movements.

(a) If cattle or other bovine species from a brucellosis class-free state that is also a tuberculosis class-free state move directly from a farm of origin, they may enter a state-federal approved stockyard in Kentucky without an entry permit or CVI. Those cattle or other bovine species shall meet the requirements established in paragraph (c) of this subsection.

(b) Slaughter cattle or other bovine species. Cattle or other bovine species consigned for immediate slaughter may enter Kentucky without an official test for brucellosis or tuberculosis if the cattle or other bovine species are consigned for immediate slaughter to a recognized slaughtering center or to an approved state-federal stockyard as defined by 9 C.F.R. Part 71, for reconsignment to a recognized slaughtering center. Animals diverted en route shall be in violation of this administrative regulation.

(c) The seller's name and address and either the animal's premises of origin or PIN shall be provided for cattle or other bovine species imported to a state-federal approved stockyard or directly to a recognized slaughtering center.

(d) Cattle or other bovine species moving from an out of state state-federal approved stockyard shall be accompanied by a bill of sale or way bill.

Section 3. Horses or Other Equine Species. (1) General requirements for entry.

(a) All horses or other equidae entering Kentucky for any purpose, except as provided in paragraph (b), [or] (d), and (e) of this subsection, shall meet the requirements established in subsections (2) and (3) of this section.

(b) Equine purchased by a licensed Kentucky dealer at an out-of-state horse sale shall:

1. Enter the state on an entry permit;

2. Be accompanied by a VS Form 10-11 or EIA test form verifying a negative equine infectious anemia (EIA) test within the last twelve (12) months or shall be tested for EIA within two (2) weeks of entry; or

3. Move directly to an approved Kentucky horse sale.

(c) Equine entering the state for racing purposes shall meet the requirements established in KAR Titles 810 and 811.

(d) Equine moving directly to a veterinary facility in Kentucky shall be exempt from subsections (2) and (3) of this section.

(e) Equine maybe moved directly to an approved Kentucky horse sale by an out of state, nondealer owner from that owner's

premises.

(2) Certificate of Veterinary Inspection.

(a) A CVI shall be required for equine entering the state except as provided in subsection (1)(b) and (d) of this section and shall meet the criteria established in 302 KAR 20.020, Section 1(3)(c).

(b) Equine Interstate Event Permits from states participating with Kentucky shall:

1. Be accepted for exhibition purposes in lieu of the CVI and EIA test report if they are within six (6) months of the issue date and there has been no change of ownership; and

2. Meet the requirements established in 302 KAR 20.020, Section 1(5).

(3) Equine infectious anemia

(a) All horses or other equidae, except unweaned foals accompanied by their dam, shall be negative to a USDA official test, pursuant to 9 C.F.R. Part 75, within twelve (12) months prior to entry.

(b) A copy of the Form VS 10-11 or EIA test form verifying a negative EIA from a laboratory approved by the USDA, pursuant to 9 C.F.R. Part 75, shall be attached to the CVI.

(4) Approved Kentucky horse sales.

(a) Horses or other equidae purchased by a licensed Kentucky dealer out-of-state may move directly to an approved Kentucky horse sale without proof of a negative EIA test.

(b) All horses or other equidae presented without proof of a negative EIA test within the previous twelve (12) months shall have a blood sample drawn for EIA testing by the approved market veterinarian at the seller's expense

Section 4. Swine. (1) General requirements for entry.

(a) Except as provided in paragraph (b) of this subsection, domestic swine for exhibition, sale, breeding, or feeding shall meet the requirements established in subsections (2) and (3) of this section.

(b) Swine imported directly to a recognized slaughtering center or a state-federal approved slaughter-only stockyard shall meet the requirements established in subsections (3) and (4) of this section.

(c) Swine imported to a Kentucky premises from an out of state federally approved stockyard shall meet the requirements established in subsections (3) and (4) of this section.

(d) Swine listed in this paragraph shall not be imported for any purpose:

1. Garbage fed swine;

2. Wild, captive wild, or feral swine, *Sus scrofa* per definition, including Russian wild boars or Eurasian wild boars; or

3. Swine vaccinated with Pseudorabies vaccine

(2) Certificate of Veterinary Inspection and Entry Permit.

(a) All swine entering the state for sale except as provided in subsection (1)(b) and (c) of this section, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI as required by 302 KAR 20.020, Section 1(3)(c).

(b) An entry permit shall be required prior to entry for all swine entering for sale, breeding, or feeding purposes. An entry permit shall be required for exhibition purposes from states with less than Stage 5 Pseudorabies status. The permit number shall be recorded on the CVI.

(3) Specific diseases.

(a) Brucellosis. The importation of swine shall comply with 9 C.F.R. Part 78.

(b) Pseudorabies. Testing shall not be required for swine imported if the swine originated from a Pseudorabies Stage 5 state. Swine originating from a state with less than Pseudorabies Stage 5 status shall comply with 9 C.F.R. Part 85.

(4) Swine imported to a state-federal approved livestock market, directly to a recognized slaughtering center, or to a Kentucky premises from an out of state federally-approved stockyard shall be identified with:

(a) Official identification in accordance with 302 KAR 20.020, Section 1(2); and

(b) The seller's name and address and either the animal's premises of origin or PIN.

Section 5. Sheep or Lambs. (1) General requirements for entry.

(a) Sheep or lambs for sale except as provided in paragraphs (b) and (d) of this subsection, exhibition, breeding, or feeding purposes shall meet established requirements in subsections (2) and (3) of this section.

(b) Sheep imported directly to a state-federal approved stockyard or a recognized slaughtering center shall meet the requirements established in subsections (3) and (4) of this section.

(c) Sheep or lambs that originate from known trace, source, or infected Scrapie flocks as determined by the USDA APHIS VS in compliance with 9 C.F.R. Part 79 shall not be imported.

(d) Sheep imported to a Kentucky premises from a state-federal approved stockyard shall meet the requirements established in subsections (3) and (4) of this section.

(2) Certificate of Veterinary Inspection and Entry Permit.

(a) All sheep or lambs entering the state for sale except as provided in subsection (1)(b) and (d) of this section, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) An entry permit shall be required for sheep or lambs entering for sale, breeding, or feeding purposes.

(3) Specific diseases.

(a) Scrapie

1. All sheep shall originate from a Scrapie consistent state meeting the requirements of the USDA APHIS VS Scrapie Flock Certification Program established in 9 C.F.R. Part 79.

2. Sheep that require a CVI for movement shall be identified with an official USDA Scrapie Program identification tag or other official identification method and documented on a CVI.

3. If enrolled in the USDA Scrapie Flock Certification Program, the Scrapie Flock number shall be recorded on the CVI.

(b) Scabies. Sheep affected with or exposed to scabies or from an area quarantined because of scabies shall not be eligible for entry into Kentucky.

(c) Sore mouth. Any sheep or lambs showing lesions of contagious ecthyma shall not be imported.

(d) Johnes. The importation of sheep or lambs shall comply with 9 C.F.R. Part 80.

(4) Other movements.

(a) Sheep or lambs from Scrapie consistent states may be imported into Kentucky for immediate slaughter if consigned directly to a recognized slaughtering center approved by the USDA or the State Veterinarian or to a state-federal approved stockyard or concentration point if reconsignment from that point is to immediate slaughter.

(b) Only sheep or lambs from Scrapie consistent states may be imported to state-federal approved stockyards or state-approved concentration points for the purpose of sale.

(c) VS Form 1-27 shall be required for movement of sheep or lambs from trace, source, or infected flocks to an approved site.

(d) Sheep or lambs imported to state-federal approved stockyards, concentration points or directly to a recognized slaughtering center or to Kentucky premises from a state-federal approved stockyard shall be identified with:

1. An identification in accordance with 9 C.F.R. Part 79; and

2. The seller's name and address and either the animal's premises of origin or PIN.

Section 6. Goats (1) General requirements for entry.

(a) Goats entering Kentucky for sale except as provided in paragraph (b) of this subsection, exhibition, breeding, or feeding purposes shall meet the requirements established in subsections (2) and (3) of this section.

(b) Goats imported directly to a recognized slaughtering center, a state-federal approved stockyard, telemarketing sale, or KDA approved graded sale shall meet the requirements established in subsections (3) and (4) of this section.

(c) Goats imported to a Kentucky premises from a state-federal approved stockyard shall meet the requirements established in subsections (3) and (4) of this section.

(2) Certificate of Veterinary Inspection and Entry Permit.

(a) All goats entering the state for sale except as provided in subsection (1)(b) and (c) of this section, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(d).

(b) An entry permit shall be required for goats entering for sale, breeding, or feeding purposes

(3) Specific diseases.

(a) Scrapie

1. All goats shall originate from a Scrapie consistent state meeting the requirements of the USDA APHIS VS Scrapie Flock Certification Program established in 9 C.F.R. Part 79.

2. Goats that require a CVI for movement shall be identified with an official USDA Scrapie Program identification tag or other official animal identification in accordance with 302 KAR 20:020, Section 1(2).

(b) Brucellosis. Animals six (6) months of age or older shall have an official negative test within thirty (30) days prior to entry or originate directly and immediately from a class free state or a brucellosis-certified herd.

(c) Tuberculosis. Animals six (6) months of age or older shall have an official negative tuberculin test within sixty (60) days prior to entry or originate directly and immediately from a class free state or a tuberculosis-accredited herd.

(d) Scabies. Goats affected with or exposed to scabies or from an area quarantined because of scabies shall not be eligible for entry into Kentucky

(e) Johnes. The importation of goats shall comply with 9 C.F.R. Part 80.

(4) Goats of any age entering a state-federal approved Kentucky stockyard, KDA-approved graded sale, telemarketing assembly point, a Kentucky recognized slaughtering center, or a Kentucky premises from a state-federal approved stockyard shall be identified with:

(a) An identification in accordance with 9 C.F.R. Part 79; and

(b) The seller's name and address and either the animal's premises of origin or PIN.

Section 7. Poultry, Farm-raised Upland Game Birds or Other Avian Species. (1) General requirements for entry

(a) Birds four (4) months or older for sale or exhibition purposes shall meet the requirements established in subsections (2) and (3) of this section.

(b) Chicks or hatching eggs imported shall meet the requirements established in subsections (2) and (3)(a)2 of this section.

(c) All birds imported to an approved slaughter facility and all commercial birds moving between a company's production units shall meet the requirements established in subsections (3) and (4) of this section.

(2) Certificate of Veterinary Inspection.

(a) All poultry shall be accompanied by:

a. An NPPI VS Form 9-3 as specified in 9 C.F.R. Part 145 including flock number issued; or

b. A CVI verifying a valid test date.

(3) Specific diseases.

(a) Salmonella pullorum.

1. Birds four (4) months of age or older shall be negative to an official Salmonella pullorum test within thirty (30) days of entry or originate from a NPPI flock. The NPPI flock number or both the test date and the laboratory of test shall be recorded on the CVI.

2. Chicks or hatching eggs shall originate from NPPI flocks or a flock that satisfies the requirements of KRS 257.410.

(b) Avian influenza. All poultry shall comply with the requirements of 302 KAR 20:250, Avian influenza.

(4) Other movements.

(a) Commercial birds moving between company units shall have a way bill or log sheet stating origination of birds and intended destination with flock NPPI number.

(b) Birds going directly to an approved slaughter facility shall provide the name and address for premises of origin.

Section 8. Psittacine or Pet Birds. The entry of psittacine or pet birds shall comply with 9 C.F.R. Part 82.

(1) General requirement for entry.

(a) All psittacine or pet birds imported for any purpose shall meet the requirements established in subsection (2) of this section.

(b) All psittacine or pet birds shall be identified with official identification in accordance with 302 KAR 20:020, Section 1(2).

(c) All importers of psittacine or pet birds for other than exhibi-



tion purposes shall keep records that indicate the origin and date of shipment, the name and address of the breeder, the number of birds shipped, and the name and address of the persons to whom the imported birds are sold.

(2) Certificate of Veterinary Inspection. All imported psittacine or pet birds shall be accompanied by a CVI, inspected and found free of infectious and communicable diseases within fifteen (15) days immediately prior to the date of entry.

Section 9. Ratites. (1) General requirements for entry. Ratites imported for any purpose shall meet the requirements established in subsections (2) and (3) of this section.

(2) Certificate of Veterinary Inspection and Entry Permit.

(a) All ratites entering the state for sale, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) An entry permit shall be obtained from OSV prior to entry of ratites into Kentucky. The permit number shall be recorded on the CVI and the certificate shall accompany the animals on entry.

(c) All ratites shall have a permanent official identification in accordance with 302 KAR 20:020, Section 1(2).

(3) Specific diseases.

(a) Ratites shall be negative to an official test for Avian Influenza within thirty (30) days prior to entry or originate from a NPIP AI clean flock.

(b) Ratites shall be negative to an official test for Salmonella pullorum within thirty (30) days prior to entry or originate from a NPIP flock.

Section 10. Dogs, Cats, or Ferrets. (1) General Requirements for Entry. Dogs, cats, or ferrets for sale, exhibition or breeding purposes shall meet requirements established in subsections (2) and (3) of this section.

(2) Certificate of Veterinary Inspection.

(a) All dogs, except as provided in paragraph (b) of this subsection, cats, or ferrets entering the state for any purpose shall be accompanied by a valid CVI required by 302 KAR 20:020, Section 1(3)(c).

(b) Service dogs shall be exempt from a CVI requirement, but shall have a current rabies vaccination certificate.

(3) All dogs, cats, or ferrets over four (4) months of age imported for sale, exhibition, or any other purpose shall be vaccinated against rabies by a licensed veterinarian in accordance with the guidelines in the "Compendium of Animal Rabies Prevention and Control" prepared by the National Association of State Public Health Veterinarians, Inc., and available at [www.cdc.gov](http://www.cdc.gov).

Section 11. Exotic Ruminants, Circus, or Menagerie Animals.

(1) General requirements for entry. All exotic ruminants, circus, or menagerie animals imported into the state for sale, exhibition or breeding purposes shall meet the requirements established in subsections (2), (3), and (4) of this section.

(2) Certificate of Veterinary Inspection and Entry Permit.

(a) All exotic ruminants, circus, or menagerie animals entering the state for sale, exhibition or breeding purposes shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) A CVI shall be valid for thirty (30) days.

(3) A transportation permit from the Kentucky Department of Fish and Wildlife Resources shall be required. The transportation permit shall be obtained from the Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

(4) Specific disease requirements.

(a) Tuberculosis. Except as provided in paragraph (e) of this subsection, a person shall not import an exotic ruminant or bovine unless the animal tests negative on an official tuberculin test as provided in 9 C.F.R. 77.5 and conducted not more than sixty (60) days prior to entry date.

(b) Brucellosis. Except as provided in paragraph (e) of this subsection, a person shall not import an exotic ruminant or bovine unless the animal tests negative on an official test as provided in 9 C.F.R. 78.1 and conducted not more than thirty (30) days prior to entry date.

(c) EIA. All equine species animals shall meet the requirements established in Section 3(3)(a) of this administrative regulation.

(d) Johnes. The importation of all exotic ruminants shall comply with 9 C.F.R. Part 80.

(e) Subsection (4)(a) and (b) shall not apply to an exotic ruminant imported directly to an institution accredited by the American Association of Zoological parks and aquariums.

Section 12. Camelids. (1) General requirements for entry. Camelids imported for any purpose shall meet the requirements established in subsections (2) and (3) of this section.

(2) Certificate of Veterinary Inspection and Entry Permit.

(a) All camelids entering the state shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) An entry permit shall be obtained from OSV prior to entry of camelids into Kentucky. The permit number shall be recorded on the CVI and the certificate shall accompany the animals on entry.

(3) Specific diseases.

(a) Brucellosis. Camelids imported from class free states shall not be required to test. Camelids six (6) months of age or older from states not class free shall be negative to an official brucellosis test within thirty (30) days prior to entry.

(b) Tuberculosis. Camelids imported from class free states shall not be required to test. Camelids six (6) months of age or older from states not class free shall be negative to an official tuberculosis test within sixty (60) days of entry. The injection site shall be in a nonhaired area that may be inspected visually and by palpation.

Section 13. Cervids. (1) General requirements for entry. Cervids imported for any purpose shall meet the requirements established in subsections (2) and (3) of this section.

(2) Certificate of Veterinary Inspection and Entry Permit.

(a) All cervids entering the state shall be accompanied by a valid CVI as required by 302 KAR 20:020, Section 1(3)(c).

(b) An entry permit shall be obtained from OSV prior to entry of cervids into Kentucky. The permit number shall be recorded on the CVI and the certificate shall accompany the animals on entry.

(c) Each entry permit shall be approved by the State Veterinarian or his representative before issuance.

(3) Specific diseases.

(a) Chronic Wasting Disease (CWD).

1. Cervids shall originate from a CWD Certified herd that is certified by the exporting state's state veterinarian or agency with jurisdiction over the CWD surveillance in farmed cervids;

2. The Kentucky State Veterinarian shall evaluate the exporting state's CWD certification program prior to approval; and

3. All requirement in KRS 257.550 shall be met prior to interstate movement.

(b) Brucellosis.

1. Cervids imported from class free states shall be exempt from testing.

2. Cervids six (6) months of age or older originating from states that do not have class free status shall be negative to an official brucellosis test within thirty (30) days prior to entry or

3. Originate from a Brucellosis certified herd. The herd certification number and last test date shall be listed on the CVI.

(c) Tuberculosis.

1. Originate from a Cervid Tuberculosis accredited herd with the herd accreditation number and the last herd test date listed on the CVI or

2. Cervids twelve months of age or older shall be negative to an official tuberculosis test within ninety (90) days of entry [Pursuant to KRS 150.740(1), members of the animal family Cervidae shall not be imported into Kentucky.]

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Permit for movement of restricted animals the USDA APHIS VS Form 1-27", June 1989;

(b) Report of Sales of Hatching Eggs, Chicks, and Poults, USDA APHIS VS Form 9-3, June 1998;

(c) "Equine Infectious Anemia (EIA) Test Form", Kentucky

Department of Agriculture, Office of State Veterinarian, KYSV-301, July 2005;

(d) "EIA Laboratory Test Form, USDA APHIS VS Form 10-11", May 2003; and

(e) "Compendium of Animal Rabies Prevention and Control", 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, Suite 252, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2009 at 10 a.m. at 100 Fair Oaks Lane 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person

**CONTACT PERSON:** Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort, Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides requirements for the interstate movement of animals into Kentucky. It will help prevent the introduction of animal diseases into the state by regulating animal movement and disease control.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 246.295, 257.030, and 257.070.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by administering KRS 246.210, 246.220, 257.010, 257.030, 257.110, 257.550 by establishing and modifying entry requirements into the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation makes clear the entry requirements for animals into Kentucky to prevent disease. This amended regulation established the requirements for cervid entry.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amended regulation makes clear the entry requirements for animals into Kentucky to prevent disease, where the current regulation bars entry.

(b) The necessity of the amendment to the administrative regulation: This amended regulation makes clear the entry requirements for animals into Kentucky to prevent disease, where the current regulation bars entry.

(c) How this amendment conforms to the content of the authorizing statutes: The amendments conform to the statutes by establishing entry requirements for cervids.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation makes the changes necessary to keep entry requirements current with

needed animal health protection.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department of Agriculture and approximately 71 farmed cervid producers are impacted.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: New changes will allow movement of animals into the state.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities may be required to obtain a CVI from a veterinarian prior to entry into Kentucky

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Interstate movement of cervids will be allowed.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. KDA general funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Agriculture, Division of Animal Health

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 9 C.F.R. part 55, KRS 246.210, 246.220, 257.010, 257.030, 257.110, 257.550

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional costs.

(d) How much will it cost to administer this program for subsequent years? No additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 9 C.F.R. Chapter 1 parts 77, 88

2. State compliance standards. KRS 246.295, 257.030,

257.070

3. Minimum or uniform standards contained in the federal mandate. 9 C.F.R. Chapter 1 parts 77, 88

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional standards to allow equine and cervid movements.

**GENERAL GOVERNMENT**  
**Department of Agriculture**  
**Office of State Veterinarian**  
**Division of Animal Health**  
**(Amendment)**

**302 KAR 20:052. Animal carcass composting.**

RELATES TO: KRS 257.010, 257.160(1)-(2)

STATUTORY AUTHORITY: KRS 257.160(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.160(3) authorizes the State Board of Agriculture to promulgate administrative regulations to implement KRS 257.160. KRS 257.160(1)(f) allows disposal of animal carcasses by composting if the disposal is performed in an approved facility and according to the board's administrative regulations. This administrative regulation establishes required procedures for animal carcass composting.

Section 1. Definitions (1) "Animal" means fish and any member of the equine, ovine, bovine, porcine, feline, canine, caprine, lapin, bison, cervidae, camelid, ratite, and avian species.

(2) "Compost" is defined by KRS 257.010(4).

(3) "Owner" is defined by KRS 257.010(9).

Section 2. Permit Required. (1) The State Veterinarian shall issue permits for animal composting facilities. The cost of the permit shall be twenty-five (25) dollars per year. The permit shall be renewed at five (5) year intervals.

(2) A permit application shall include the name and address of the compost owner, the location of the composting facilities, and a description of the facilities and composting procedure.

(3) All animal composting facilities shall be subject to inspection by the State Veterinarian or his representative.

(4) Any animal carcasses not composted shall be disposed of in a manner consistent with KRS 257.160.

Section 3. Permitted Facilities. (1) Permitted facilities shall be constructed to meet guidelines established by the University of Kentucky College of Agriculture Cooperative Extension Service publication "On-Farm Composting of Animal Mortalities" ID-166 [or exceed the current United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard for Composting Facility, Code 317, in Section IV of the Kentucky Field Office Technical Guide] and shall meet the requirements of the Kentucky Agriculture Water Quality Plan.

(2) All processing of dead animals shall be done within the permitted facility.

(3) Dead animals to be composted shall be temporarily stored indoors on floors constructed of concrete or soil-cement as identified in the University of Kentucky College of Agriculture Cooperative Extension Service publication "Using Soil-Cement on Horse and Livestock Farms" ID-176.

(4) Hazardous materials shall not be used in the composting procedure.

(5) Reasonable and cost-effective efforts shall be taken to prevent odor, insects, and pests. All carcasses shall be inaccessible to scavengers, livestock, and live poultry.

(6) Ruminant animals may have the rumen vented prior to composting [Animals weighing over 300 pounds shall be cut into pieces small enough to ensure complete composting.

(7) The rumen of all ruminant animals shall be vented prior to composting.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The University of Kentucky College of Agriculture Cooperative Extension Service publication "On-Farm Composting of Animal Mortalities" ID-166 [United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard for Composting Facility, Code 317, in Section IV of the Kentucky Field Office Technical Guide (July, 1998); and]

(b) Kentucky Agriculture Water Quality Plan (October 1996, revised May 1999).

(c) University of Kentucky College of Agriculture Cooperative Extension Service publication "Using Soil-Cement on Horse and Livestock Farms" ID-176.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 100 Fair Oaks, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009 at 10 am at 100 Fair Oaks Lane 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation provides requirements for composting animal carcasses in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 257.160(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by administering KRS 257.160(3) though establishing and modifying entry requirements into the state

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation makes clear the composting requirements for animals in the state.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amended regulation modernizes the composting requirements to conform with the most current scientific research.

(b) The necessity of the amendment to the administrative regulation: This amended regulation changes old requirements for processing that are no longer considered needed for proper composting.

(c) How this amendment conforms to the content of the authorizing statutes: The amendments conform to the statutes by establishing composting requirements.

(d) How will this amendment assist in the effective administration of the statutes: This administrative regulation makes the

changes necessary to keep composting requirements current with needed animal health protection.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department of Agriculture and animal producers in the state who may choose to compost rather than use other disposal methods.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Animal producers may elect to compost at their option. Should they do so they must comply with the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Animal producers may elect to compost at their option. Depending on what current facilities they have, no new costs may be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): because this is optional for the producer, they will only choose this option if it is cheaper to them than an alternative. Therefore, participants that elect to compost would expect to save money over other alternatives.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KDA general funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fee has been clarified to mean a yearly fee. This will help offset the cost of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fee has been clarified to mean a yearly fee.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Agriculture, Division of Animal Health.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.010, 257.160(1)-(2), 257.160(3).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional costs or work time needed over current levels.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue for the commonwealth. This is an optional program and participation cannot be determined.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional costs.

(d) How much will it cost to administer this program for subsequent years? No additional costs.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amendment)

**505 KAR 1:160. Department of Juvenile Justice Policies and Procedures: treatment program for juvenile sexual offenders~~[juveniles with sexual behavior problems and offenses]~~.**

RELATES TO. KRS 15A.065, 15A.067, 200.080-120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095~~[-635.100(7)]~~, 635.095, 635.500, 635.505(1), 635.515, 635.520, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, 635.520, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Sexual Offender Treatment Program ~~[for juveniles with Sexual Behavior Problems and Offenses]~~", November 13, 2009~~[January 9, 2007]~~, which includes the following:

800 Treatment Program for Juvenile Sexual Offenders~~[Juveniles with Sexual Behavior Problems and Offenses]~~ (Amended 11/13/09~~[1/9/07]~~);

[801 Intake and Assessment (Amended 1/9/07);

802 Sex Offender Specific Treatment Protocol (Amended 1/9/07);]

803 Polygraph Examinations (Amended 11/13/09~~[1/9/07]~~);

[804 Juvenile Sexual Offender Registry (Amended 1/9/07);

805 Youthful Offenders (Amended 1/9/07);]

806 Juvenile Sexual~~[Sex]~~ Offender Treatment and Assessment Professional Approval Process~~[Provider]~~ (Amended 11/13/09~~[1/9/07]~~).

(b) The "Standard Operating Procedures Manual for the Treatment of Juvenile Sexual Offenders"~~[Program for Juveniles with Sexual Behavior Problems and Offenses]~~ (Amended 11/13/09~~[1/9/07]~~);

(c) The "Estimate of Risk of Adolescent Sex Offense Recidivism (ERASOR)", 08/15/06; [and]

(d) The "Juvenile Sex Offender Assessment Protocol (J-SOAP)", 08/15/06;

(e) The "Juvenile Sexual Offender Tracking system Initial Reporting Form Part I", 11/13/09; and

(f) The "Juvenile Sexual Offender Tracking System Reporting Form Part II", 11/13/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

J. RONALD HAWS, Commissioner

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on Monday, December 21, 2009, at 9 a.m., at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky

40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, December 14, 2009, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person:** LaDonna Koebel, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice sex offender treatment program, including the rights and responsibilities of the Department of Juvenile Justice employees, treatment providers and the residential and community population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, 635.500, 635.505(1), 635.515 and 635.520 and to specifically provide a treatment protocol for juvenile sexual offenders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the sexual offender treatment protocol of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise sexual offender treatment protocol to the Department of Juvenile Justice employees, treatment providers and the residential and community population as to their duties, rights, privileges and responsibilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will provide a uniform written sexual offender treatment protocol for all youth committed to the Department of Juvenile Justice and declared juvenile sexual offenders, and reflect the treatment and practice of the agency.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.067, 635.500, 635.505(1), 635.520, and 635.515.

(c) How the amendment conforms to the content of the authorizing statutes: It provides for the operation, policies and procedures governing the department of Juvenile Justice sexual offender treatment program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the Department of Juvenile Justice to treat juvenile sexual offenders more efficiently and uniformly.

(3) List type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 youth annually, 20 treatment providers, and department personnel.

(4) Provide analysis of how the entities identified in question (3) will be impacted by the implementation of this regulation, if new, or by the change, if it is an amendment, including:

(a) By providing and implementing a clear and concise sexual offender treatment protocol for the Department of Juvenile Justice employees, treatment providers, and the residential and community population, the juvenile sexual offender treatment program will be managed more effectively and consistently. The revised treatment program will be structured to meet the individual youth's treatment needs.

(b) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment. The youth who participate in the juvenile sexual offender treatment program will be provided with specific information regarding the required treatment protocol and the steps that shall be expected of them to complete the treatment program. Treatment providers and DJJ employees will provide assessments and treatment in accordance with the treatment protocol as outlined in the regulation and the materials incorporated by reference.

(c) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In complying with this administrative regulation no monetary costs will be incurred by the youth, the treatment providers, or the DJJ employees. All costs of implementation of this treatment protocol will be paid out of budgeted monies by the Department of Juvenile Justice.

(d) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth who receive treatment in the juvenile sexual offender treatment program shall be more effectively and consistently served. The treatment providers and the DJJ employees who administer the assessments and the treatment protocol shall provide treatment tailored to the youth's individual needs.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: \$5,000 for training staff

(b) On a continuing basis: \$5,000 for training staff

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) Tiering. Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

(2) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Response: Department of Juvenile Justice.

(3) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 200.115, 605.150, 635.095, 635.100(7), 635.500, 635.505(1), 635.520, 635.515, 640.120, and 645.250.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? See narrative provided below.

(5) How much will it cost to administer this program for subsequent years? See narrative provided below.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):

Other Explanation: This regulation will provide a uniform written sexual offender treatment protocol for all youth committed to the Department of Juvenile Justice who are declared juvenile sexual offenders, and reflect the treatment and practice of the agency. The only expense regarding this regulation is the cost of staff training, which for the first year is approximately \$5,000.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Department for Libraries and Archives**  
**Public Records Division**  
**(Amendment)**

**725 KAR 1:020. Recording and reproducing[Reproduction of] public records.**

RELATES TO: KRS 171.450(1)(c), 171.600, 171.670

STATUTORY AUTHORITY: KRS 61.870, 171.420, 171.450, 171.660, 171.670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450(1)(c) requires the department to establish standards and procedures for recording, managing and preserving public records, and for the reproduction of public records by photographic or microphotographic process.

Section 1. ~~[Due to the rapid changes being brought about in technology, the Department for Libraries and Archives does not approve or disapprove of one method of recording by photographic or microphotographic process over another.]~~ In order to safeguard the present and future interests of the people of the Commonwealth, all agencies of state and local government shall ensure the safety, security, and preservation of public records and adequate documentation of government agencies by following this regulation and related procedures issued by the Department for Libraries and Archives concerning recording, reproduction, and reformatting of records ~~[should obtain advice from the Public Records Division prior to changing their methods of recording.]~~

Section 2. Recording may be done on paper, microfilm, or in an approved digital format~~[photostats, electrostatic, thermographic or on film]~~ in accordance with KRS 171.450 and 171.660, and with policies and procedures of the Department for Libraries and Archives

Section 3. If the recording is done on paper, it must be done on thirty-two (32) weight, 100 percent linen paper or its equivalent in accordance with specifications established by the National Institute of Standards and Technology~~[National Bureau of Standards]~~.

Section 4. ~~If the recording is done on microfilm, miniprint, microcard, microfiche, or some other type of microfilm, follow the standards and procedures in "Microfilming and Digital Imaging: A Procedural Guide."~~ If done on photostats, electrostatic or thermographic methods, it must be done on thirty-two (32) weight stock of proven permanency.]

Section 5. If the recording is in an approved digital format or reformatted to digital image, follow the standards and procedures in the "Microfilming and Digital Imaging: A Procedural Guide" ~~[done on microfilm, miniprint, microcard, microfiche, or some other type of microform, the following safeguards must be observed to obtain approval of the Department for Libraries and Archives:~~

(1) A security copy (negative or positive in 16mm or 35mm) roll form must be provided the Public Records Division for security storage. This film shall be provided at no cost.

(2) ~~Filming in a series should not be continued after the first roll until a test of the film has been completed. The Public Records Division shall be the principal microfilm advisory authority.~~

(3) ~~The security and use copies of microfilm should be tested for resolution, density, and hypo residue. The security film shall be physically inspected every five (5) years for mold, spots, or other evidences of deterioration.~~

(4) ~~The security copy shall not be used or handled in any way to cause the film to be scratched or damaged.~~

(5) ~~The Public Records Division shall be responsible, where necessary, for supervising appropriate tests of microfilm, which shall follow the standards of the United States Government Bureau of Testing and National Microfilm Association.]~~

Section 6. No original records may be destroyed by any state or local agency after being microfilmed, digitalized, or otherwise duplicated or reformatted without written approval of the State Archivist and Records Administrator, following the retention and disposition schedules enacted by the State Archives and Records Commission and the policies and procedures of the Department for Libraries and Archives.

Section 7. The State Archives and Records Commission shall be the final authority in the executive branch of government for the disposition of all public records in Kentucky, and shall make decisions on records retention and disposition through the records scheduling process, in consultation with the Department for Libraries and Archives and the agencies involved. The Department for Libraries and Archives and the State Archivist and Records Administrator will carry out the decisions of the commission.

Section 8. Incorporation by Reference (1) The following material is incorporated by reference:

(a) "Microfilming and Digital Imaging of Public Records: A Procedural Guide," October, 2009;

(b) "Policy Memorandum on the Storage of Public Records as Scanned Images, PM 09-01," June, 2009; and

(c) "Ensuring the Long-term Accessibility and Usability of Records Stored as Digital Images: Guidelines for State and Local Government Officials," June, 2001.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Public Records Division, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (state, county, and city) but shall not make any decisions without consultation with the agencies involved who shall participate in the decision-making.]

WAYNE ONKST, Commissioner

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009 at 11 a.m. at the offices of the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Board Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than December 14, 2009, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Wayne Onkst, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, phone (502) 564-8300 ext. 312, fax (502) 564-5773.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Wayne Onkst, Commissioner

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes standards and procedures for recording, managing, and preserving public records, and for the reproduction of public records.



(b) The necessity of this administrative regulation This regulation provides government agencies with specific technical requirements and procedures for recording and reformatting public records.

(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation directly conforms to the Public Records Law and the Open Records Law, which, together ensure that adequate documentation of agencies is created and maintained.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific technical and procedural direction on recording and reproducing public records

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: This is a change to an existing regulation, written over thirty years ago. The original regulation did not include the current national standards and best practices that have been in use at the Kentucky Department for Libraries and Archives for over twenty years.

(b) The necessity of the amendment to this administrative regulation: See 1.b

(c) How the amendment conforms to the content of the authorizing statute: See 1.c

(d) How the amendment will assist in the effective administration of the statutes: See 1.d

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local government agencies in Kentucky are affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: Government agencies have been compliant with this regulation, by following the procedures and policies of the Kentucky Department for Libraries and Archives. Nothing will change for the agencies, other than having the procedures and policies incorporated by reference into the regulation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: State and local government agencies with compliant records management programs are already performing their duties under this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with records management programs and national recordkeeping standards is a cost-saving measure.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of this regulation include proper recordkeeping, good records management programs, adequate and proper documentation of agency policies, procedures, and actions being created and maintained, and cost-saving through reformatting or digital storage. This regulation also provides that agencies will comply with the Open Records and Public Records Laws.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially. The Department for Libraries and Archives has had a microfilming program for thirty-five years and a reformatting and digitization program for nearly ten years. It operates on a cost-recovery basis.

(b) On a continuing basis: See 5(b)

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The reformatting program operates on a cost recovery basis, entirely on agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation does not call for an increase in fees, although periodic assessment of supply, equipment, and labor costs might cause an increase to recover costs.

(8) State whether or not this administrative regulation estab-

lishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? N/A

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All agencies that record or reformat records are impacted.

3 Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.870, 171.420, 171.450, 171.660, 171.670

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Recording that documents agency business is done to comply with the Open Records Law and the Public Records Law, in the course of carrying out agency business. Reformatting or otherwise reproducing is a decision made by agencies, based on good records management practices. Recording and reproducing have been done by agencies for many years, so this does not create an increased cost.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Reformatting will generate approximately 700,000 in cost-recovery funds, which will be spent on increased reformatting records for government agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Generally the same, although there may be slight increases as more agencies elect to digitize paper records.

(c) How much will it cost to administer this program for the first year? Costs for digitization approximately meet revenues, although with the initial outlay for equipment and maintenance, costs initially exceed revenues. Costs for microfilming are directly cost recovery.

(d) How much will it cost to administer this program for subsequent years? Costs should be generally the same, especially if no new equipment is purchased and reformatting can be done with existing equipment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Libraries and Archives Field Services Division (Amendment)

##### 725 KAR 2:060. Certification of public librarians.

RELATES TO: KRS 171.250, 171.260, 171.270

STATUTORY AUTHORITY: KRS 171.250, 171.260, 171.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.260 requires certification of public librarians and other full-time employees. KRS 171.250 requires the board to establish the requirements for certification. This administrative regulation establishes the requirements for certification of public librarians.

Section 1. Definitions. (1) "ALA" means the American Library Association.

(2) "Board" means the Kentucky State Board for the Certification of Librarians.

(3) "[Continuing education units] or "CEU" means educational offerings that provide credit through a certified program.



(4) "Full-time" means working more than 100 hours per month.

(4)(5) "Library information services" means duties performed by library employees that require special skills and knowledge to be performed properly.

(5)(6) "Library work experience" means employment in a library that includes administration, collection development, technical services, public services, or support for public service areas, and excludes secretarial, custodial, groundskeeping, security, food service, driver, and messenger duties.

Section 2. Required Certification by Public Library Position. (1) A library director serving a population of more than 15,000 shall hold or obtain a professional certificate.

(2) A library director serving a population of 15,000 or less shall hold or obtain at least the paraprofessional certificate.

(3) An assistant director, bookmobile librarian, branch head, or department head shall hold or obtain at least the paraprofessional certificate.

(4) All other full-time positions providing library information services as determined by local library policy shall be filled by persons who obtain or hold at least the library experience certificate.

Section 3. Types of Certificates. (1) A Professional Certificate I shall be valid for five (5) years, and shall be awarded if an applicant has obtained a master's degree in library science from an ALA accredited library school.

(2) A Professional Certificate II shall be valid for five (5) years and shall be awarded if an applicant has obtained:

(a) A master's degree in library science from a library school that has not been ALA accredited; or

(b) A master's degree with at least fifteen (15) graduate hours in library science [a master's degree in library science from a library school that has not been ALA accredited]

(3) A Professional Certificate III shall be valid for five (5) years and shall be awarded if an applicant has obtained the following requirements before July 1, 2011:

(a) A bachelor's degree with at least twenty-one (21) hours in library science; or

(b) A master's degree with at least twelve (12) hours in library science.

(4) A Professional Certificate IV shall be valid for five (5) years, and shall be awarded if an applicant passed the library certification examination before July 1, 1980.

(5) A paraprofessional certificate shall be valid for five (5) years and shall be awarded if an applicant has completed or obtained:

(a)1. Sixty (60) hours of college training, including at least twelve (12) hours of library science; and

2. Two (2) years of full-time library work experience;

(b)1. A high school diploma or GED,

2. At least fifteen (15) hours of library science; and

3. Five (5) years of full-time library work experience;

(c) A bachelor's degree with at least twelve (12) hours in library science; or

(d) A master's degree with at least six (6) hours in library science.

(6) A library experience certificate shall be valid for five (5) years and shall be awarded if an applicant has obtained a high school diploma or GED and has completed

(a) Twelve (12) hours in library science;

(b) Nine (9) hours in library science and three (3) hours in a related field of study;

(c) Six (6) hours in library science and ten (10) years of full-time library work experience; or

(d) A bachelor's degree and six (6) hours in library science.

(7) A professional, paraprofessional or library experience certificate shall be renewed according to 725 KAR 2 070.

(8) A temporary certificate shall be valid for five (5) years and shall be issued to a person who:

(a) Holds a job requiring certification as provided in Section 2 of this administrative regulation; and

(b) Does not meet the requirements of Section 2 of this administrative regulation; and

(c) Is promoted to a job requiring a higher level of certification as provided in Section 2 of this administrative regulation.

Section 4. Sources of Education for Initial Certification. (1) The board shall accept academic credit from college credit courses offered by an institution of higher education, which is accredited by its respective regional association.

(2) The board shall accept library and information science credits from courses offered by:

(a) Graduate schools accredited by the Committee on Accreditation of the American Library Association and these courses shall be approved for all types of certificates;

(b) Colleges whose library and information science departments are accredited by their respective regional associations and these courses shall be approved for all types of certificates;

(c) Accredited colleges that offer individual library and information science courses and these courses shall be approved for Professional III, Paraprofessional, and Library Experience certificates [all types of certificates]; or

(d) Community and technical colleges that offer library or information science courses and these courses shall be approved for Professional III, Paraprofessional and Library Experience certificates

(3) The board shall accept one (1) or more nontraditional sources of education for the paraprofessional or the library experience certificates as follows:

(a) A library institute shall be an in-depth program of library and information science developed according to the Approved Guidelines for Library Institutes. The program may be submitted to the board for approval sixty (60) days in advance of implementation. One (1) institute shall substitute for a three (3) hour college level library and information science course and shall be substituted once. (b) Four (4) CEUs in library topics shall be equal to one (1) three (3) hour college level course, and may be substituted once]

Section 5. Application for public library certification shall be made to the board by submitting a completed Application for Certification [Certificate] of Librarianship.

Section 6. A fee of twenty (20) [five (5)] dollars shall be charged for each certificate issued.

Section 7. A professional, paraprofessional or library experience certificate shall be issued to an applicant who meets the requirements and submit the required fee.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Approved Guidelines for Library Institutes, January 29, 1992; and

(b) Application for Certification [Certificate] of Librarianship, December 15, 2008 [January 29, 1992].

(2) This material may be inspected, copied or obtained at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40602-0537, Monday through Friday, 8 a.m. to 4:30 p.m.

WAYNE ONKST, Commissioner

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009 at 3 p.m. at the offices of the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Board Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than December 14, 2009, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public

hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Wayne Onkst, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, phone (502) 564-8300 ext. 312, fax (502) 564-5773.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person:** Wayne Onkst, Commissioner

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements of certification of public librarians and full-time library staff. It also states the fees associated with certification.

(b) The necessity of this administrative regulation: This administrative regulation is required under KRS 171.260 and 171.250.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.260 requires certification of public librarians and other full-time employees. KRS 171.250 requires the board to establish the requirements for certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a structure for the educational requirements for the certification of public librarians and full-time library staff.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The Professional Certificate II has been changed to include the acceptance of a master's degree in a different subject with the inclusion of 15 graduate hours in Library Science. It also includes the ending date for the Professional Certificate which will no longer be accepted. The amendment clarifies what sources of education will be accepted for initial certification. It increases the fee for certification.

(b) The necessity of the amendment to this administrative regulation: It improves the education of those seeking a professional level certificate which will make them better qualified for the positions they hold in the library.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 171.260 requires certification of public librarians and other full-time employees. KRS 171.250 requires the board to establish the requirements for certification.

(d) How the amendment will assist in the effective administration of the statutes: It provides structure to the education requirements which makes it less burdensome to administer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Public library employees of the legally established public libraries in 119 counties.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Library employees seeking certification will need to complete the appropriate number of hours of library science coursework and in some instances additional library work experience. Some levels of certification require obtaining a bachelor's or master's degree.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Initial certification will cost each applicant \$20.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The public libraries will have trained qualified staff to handle the day-to-day functions of the library.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds appropriated by the Institute of Museums and Library

Services.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Fees will be increased as part of the change.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will directly increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied because certification is open to all full-time public library employees of the legally established public libraries in Kentucky.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Legally established public libraries in 119 counties.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.250, 171.260, 171.270.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The revenue generated by this administrative regulation is dependent upon how many new employees are hired by a public library that are required to be certified.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will make approximately \$5760 in revenue available for awarding scholarships to local library personnel as authorized by KRS 171.303.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will make approximately \$5760 in revenue available for awarding scholarships to local library personnel as authorized by KRS 171.303.

(c) How much will it cost to administer this program for the first year? There will be little impact on the cost of administering the regulation and there will be no new personnel or other significant budget issues. This is an ongoing program for the State Board for the Certification of Librarians which has been in place since 1942.

(d) How much will it cost to administer this program for subsequent years? There will be little impact on the cost of administering the regulation and there will be no new personnel or other significant budget issues. This is an ongoing program for the State Board for the Certification of Librarians which has been in place since 1942.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Libraries and Archives Field Services Division (Amendment)

725 KAR 2:070. Certification renewal of public librarians.

RELATES TO: KRS 171.250, 171.260, 171.270

STATUTORY AUTHORITY: KRS 171.250, 171.260, 171.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.250(2) authorizes the board to establish the requirements for certificate renewals for public librarians. This administrative regula-

tion establishes the requirements for certificate renewals for public librarians.

Section 1. Definitions. (1) "Board" means the Kentucky State Board for the Certification of Librarians.

(2) "Contact hour" refers to a unit of measuring continuing education training one (1) hour of training equals one (1) contact hour. [Certification renewal point means a unit of measurement which is the equivalent of ten (10) contact hours of learning activity.]

(3) "Continuing education unit" or "CEU" means educational offerings that provide credit through a certified program.

(4) "Full-time" means working more than 100 hours per month.

(5) "Learning activity" means a class, institute, seminar or workshop, that is planned, coordinated, administered and evaluated in terms of learning objectives.

(6) "Library information services" mean duties performed by library employees that require special skills and knowledge to be performed properly.

(7) "Library work experience" means employment in a library that includes administration, collection development, technical services, public services, or support for public service areas, and excludes secretarial, custodial, groundskeeping, security, food service, driver, and messenger duties.

(8) "Professional library association" means an organization of librarians and persons interested in libraries.

Section 2. Required Certification Renewal by Public Library Position. (1) A library director serving a population of more than 15,000 shall renew the professional certificate every five (5) years. 100 contact hours of continuing education [Ten (10) certification renewal points] shall be accumulated within the five (5) year period.

(2) A library director serving a population of 15,000 and less shall renew at least the paraprofessional certificate every five (5) years. 100 contact hours of continuing education [Ten (10) certification renewal points] shall be accumulated within the five (5) year period.

(3) An assistant director, bookmobile librarian, branch head, or department head shall renew at least the paraprofessional certificate every five (5) years. 100 contact hours of continuing education [Ten (10) certification renewal points] shall be accumulated within the five (5) year period.

(4) All other full-time positions providing library information services as determined by local library policy shall renew the library experience certificate every five (5) years. Fifty (50) contact hours of continuing education [Five (5) certification renewal points] shall be accumulated within the five (5) year period.

Section 3. Types of Certificates. The following certificates may be renewed for a period of five (5) years:

- (1) Professional Certificate I;
- (2) Professional Certificate II;
- (3) Professional Certificate III;
- (4) Professional Certificate IV;
- (5) Paraprofessional Certificate;
- (6) Library experience certificate.

Section 4. Sources of Learning Activities that Provide Contact Hours [Certification Renewal Points]. (1) The board shall accept job-related coursework or continuing education offerings from an institution of higher education as follows:

(a) Classes, institutes, seminars, workshops, conferences, lecture series, or internships; or

(b) Courses taken for academic credit.

(2) The board shall accept activities in a professional library association as follows:

(a) Participation in seminars, workshops, conferences or lecture series; or

(b) The holding of an association office, with a statement specifying the learning activity and derived educational benefit.

(3) The board shall accept participation in seminars, workshops, conferences, or lecture series sponsored by the Kentucky Department for Libraries and Archives.

(4) The board shall accept participation in workshops, lecture series or training programs that shall be documented as job related. These activities may be sponsored by individual libraries.

(5) The board shall accept self-directed learning activities, beyond expected job duties, as follows:

(a) Writing reviews of library materials or library-related books, articles, or chapters that are published in statewide, regional or national publications regardless of format and selected through an editorial process;

(b) Writing an article for or editing a library publication with statewide, regional, or national distribution regardless of format and selected through an editorial process. [Editing a library publication with statewide, regional or national distribution;]

(c) Writing a book on a library-related topic selected for publication by a publishing company and published following an editorial process. [Making a prepared library-related presentation to library staff, library school students or library trustees; or]

(d) Developing and presenting library-related instructional training for library staff, library school students, or library trustees;

(e) Preparing for and teaching a library related course, workshop, seminar, or institute; or

(f) Listening to or viewing an audio or video recording of a job related workshop presentation or conference program, then submitting a written review indicating what was learned and how it relates to their job to serve as documentation of the learning activity. [Preparing for and teaching a course, workshop, seminar or institute.]

(6) The board shall require documentation that each learning activity incorporates new subject matter.

Section 5. (1) One (1) contact hour equals one (1) continuing education unit. [Certification renewal point shall be equal to:

(a) Ten (10) contact hours; or

(b) One (1) continuing education unit.]

(2) The conversion calculations for a type of activity to the number of contact hours [certification renewal points] shall be determined in accordance with the Certification Contact Hours [Renewal] Points Conversion Chart.

Section 6. Application for public librarian certification renewal shall be made to the board by submitting a completed Renewal Application for Certification [Certificate] of Librarianship.

Section 7. A fee of twenty (20) [five (5)] dollars shall be charged for each certificate renewal issued.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certification Contact Hours [Renewal Points] Conversion Chart", December 15, 2008 [January 29, 1992]; and

(b) "Renewal Application for Certification [Certificate] of Librarianship", December 15, 2008.

(2) This material may be inspected, copied, or obtained at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40602-0537, Monday through Friday, 8 a.m. to 4:30 p.m.

WAYNE ONKST, Commissioner

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009 at 2 p.m. at the offices of the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Board Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than December 14, 2009, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative

regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Wayne Onkst, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, phone (502) 564-8300 ext. 312, fax (502) 564-5773.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Wayne Onkst, Commissioner

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes the requirements of certification renewal of public librarians and full-time library staff. It also states the fees associated with certification.

(b) The necessity of this administrative regulation: It is required under KRS 171.250(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.250(2) authorizes the board to establish the requirements for certification renewals for public librarians.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a structure for the educational requirements for the certification renewal of public librarians and full-time library staff.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It changes the terminology of continuing education credit from certification renewal points to contact hours thus simplifying how credits are measured. The amendment also clarifies the self-directed learning activities the board shall accept. Some of the self-directed activities have also been added to reflect changes in technology. It increases the fee charged for certificate renewal.

(b) The necessity of the amendment to this administrative regulation: It simplifies how continuing education training is measured. It also improves the structure for the sources of learning activities that provide contact hours for certification renewal.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 171.250(2) authorizes the board to establish the requirements for certification renewals for public librarians.

(d) How the amendment will assist in the effective administration of the statutes: It provides structure to the continuing education requirements which makes it less burdensome to administer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Public library employees of the legally established public libraries in 119 counties.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certified librarians are allowed five (5) years to obtain continuing education credits for learning activities approved by the certification board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Certification renewal will cost each applicant \$20.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The public libraries will have trained qualified staff to handle the day-to-day functions of the library.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: federal funds appropriated by the Institute of Museums and Library Services.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Fees will be increased as part of the change.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will directly increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied because certification is open to all full-time public library employees of the legally established public libraries in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Legally established public libraries in 119 counties.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.250, 171.260, 171.270

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The revenue generated by this administrative regulation is dependent upon how many certified librarians need to renew their certification.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will make approximately \$2,640 in revenue available for awarding scholarships to local library personnel as authorized by KRS 171.303.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will make approximately \$2,640 in revenue available for awarding scholarships to local library personnel as authorized by KRS 171.303.

(c) How much will it cost to administer this program for the first year? There will be little impact on the cost of administering the regulation and there will be no new personnel or other significant budget issues. This is an ongoing program for the State Board for the Certification of Librarians which has been in place since 1942.

(d) How much will it cost to administer this program for subsequent years? There will be little impact on the cost of administering the regulation and there will be no new personnel or other significant budget issues. This is an ongoing program for the State Board for the Certification of Librarians which has been in place since 1942.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FINANCE AND ADMINISTRATION CABINET Office of the Secretary (Amendment)

##### 750 KAR 1:010. Commission procedures.

RELATES TO: KRS 157.420, 157.440, 157.611, 157.615, 157.617, 157.620, 157.622

STATUTORY AUTHORITY: KRS 157.617(1), 157.622(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.617(1) authorizes the School Facilities Construction Commission (SFCC) to promulgate administrative regulations for the orderly conduct of its affairs, including assisting local school districts to meet the school construction needs of the state. KRS 157.622(4) requires the SFCC to promulgate an administrative regulation go-

verning allocations of state funds to eligible school districts. This administrative regulation establishes the procedures the SFCC utilizes in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditure of funds, cumulating credit for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project, and allocating savings from refinancings.

Section 1. Definitions. (1) "Available local revenue" is defined by KRS 157.615(1).

(2) "Daily interest" means the total interest divided by the number of days in the first coupon.

(3) "Eligible district" is defined by KRS 157.615(16).

(4) "Level repayment schedule" means a repayment schedule in which the combined annual amount of principal and interest payments for each issue of bonds remains relatively constant over the life of the issue.

(5) "Maximum annual repayment amount" means the maximum aggregate total of SFCC annual payments for all bonds issued for a particular school district in which the SFCC has participated. If a bond series has been refunded, the original issue and debt schedule shall be the one used in making this computation.

(6) "Offer of assistance" means the amount available for a school district from a current biennium along with any allocation available from a prior period which has not expired according to KRS 157.622(5) and (6).

(7) "SFCC" means the School Facilities Construction Commission.

(8) "Total interest" means the first gross interest payment of the debt service for the SFCC portion of the schedule.

Section 2. Eligibility (1) The SFCC shall use the statement of need and available local revenue as certified by the Kentucky Board of Education in determining the rate of participation of each school district in any given biennium. Eligibility for participation as established in KRS 157.620(1) shall be certified by the Kentucky Board of Education.

(2) A school district retaining capital outlay funds in its current expense general fund under the provisions of KRS 157.420 in the year preceding the biennium in which funds are available or during the biennium shall be ineligible to participate in the SFCC Program during that funding period.

Section 3. Rate of Participation. (1) The rate of participation of each eligible district shall be determined by dividing the unmet needs of that district by the total unmet needs of all eligible districts and multiplying that fraction times the total new debt service budgeted for the biennium.

(2) If there are insufficient funds budgeted in the first year of the biennium to fund all the requests, bond sales shall be scheduled in the order in which the SFCC receives requests for approval of bond sales.

(3) All bond sales may proceed after January 1 of the first year of the biennium.

Section 4. Offer of Assistance. Upon certification of the rate of participation by the SFCC, the Executive Director of the SFCC shall notify each eligible district of its entitled rate of participation and the requirements to be met if it wishes to accept the offer of assistance. These requirements shall include:

(1) The amount of local revenue to be expended as certified by the Kentucky Board of Education;

(2) The priority order of facilities to be built as certified by the Kentucky Board of Education; and

(3) The sequence of events and deadlines to be met if the local school district accepts the offer of assistance.

Section 5. Acceptance of Offer of Assistance. (1) Within thirty (30) days of receipt of the offer of assistance, the local board of education shall notify the SFCC of acceptance or rejection of the offer of assistance. The local district response shall indicate the amount of the offer it plans to commit to construction or renovation immediately and the amount it wishes to count as cumulative cre-

dit.

(2) A district not responding within thirty (30) days shall be declared ineligible and the offer of assistance shall be withdrawn and redistributed to the eligible recipients. In extenuating circumstances and upon written request within the original thirty (30) day period, a single thirty (30) day extension shall be granted by the Executive Director of the SFCC.

Section 6. Review of Building Plans. The review and approval of building plans shall be the responsibility of the Kentucky Department of Education.

Section 7. Allowable Expenditures of Funds. (1) Funds available from available local revenue shall be expended before funds generated by bond sales authorized by the SFCC.

(2) Funds available for a project shall be expended for the purpose of major renovation or construction of the identified project except that the balance of funds remaining after the completion of the project may be expended on the next project on the approved facilities plan of the respective districts.

(3) Project costs may include site acquisition, providing architectural and engineering services, financial and legal services, and equipment.

(a) The site acquisition cost shall be limited to the lesser of:

1. The actual cost of acquiring a site; or

2. The fair market value of the site as determined by a qualified appraisal obtained by the SFCC and charged to the project account.

(b) Construction costs shall not include the cost of supplies. An item shall be considered a supply if the item:

1. Does not retain its original shape, appearance, and character with use;

2. Loses its identity through fabrication or incorporation into a different or more complex unit;

3. Is expendable. An item shall be expendable if it is more feasible to replace, rather than repair, an item that has been damaged or has lost or worn parts;

4. Is expected to serve its principal purpose for less than ten (10) years, even with reasonable care and maintenance;

5. Is not an integral part of the building. An item shall be an integral part of a building if it:

a. Is permanently fastened or attached to the building;

b. Functions as part of the building, meaning that the item is essential for the building or site to be used for its intended purpose; or

c. Will cause appreciable damage to the building if removed; or

6. Does not enhance the value of a bondholder's collateral or the project.

(4) SFCC funds or funds from the restricted account shall not be used to:

(a) Purchase a site not approved by the Kentucky Department of Education in accordance with 702 KAR 4:050; or

(b) Reimburse the local board of education for a site acquired before enactment of KRS 157.611.

Section 8. Bond Issuance Procedures. (1) Upon acceptance of an offer of assistance by a local school district, the SFCC shall determine if the local school district or the SFCC shall issue the bonds. Local school districts may request authority from the SFCC to issue the bonds through a city, county, or other agency and instrumentality of the Board of Education.

(2) If the SFCC grants permission to issue bonds at the local level, the procedures for issuing the bonds shall be as follows:

(a) The local board of education shall obtain the services of a financial advisor;

(b) The contract with the financial advisor shall be submitted to the SFCC for final approval after signature by the local school district and the financial advisor; and

(c) The local board of education shall obtain the services of a licensed trustee, paying agent, and registrar.

(3) If the size of the bond issues is less than \$1,000,000 or there is no local participation in the repayment, the SFCC may determine that it is in the best interests of the SFCC and the local school board for the SFCC to manage the bond sale procedures. If

the SFCC determines that it is in the best interest of the SFCC and the local school board for the SFCC to manage the bond sale procedures:

- (a) The bonds shall be sold in the name of the SFCC;
- (b) The SFCC shall obtain the services of a financial advisor;
- (c) The SFCC may combine multiple projects into single bond issues; and
- (d) The SFCC shall obtain the services of a licensed trustee, paying agent, and registrar.

(4) The following procedures shall be followed by all participating districts in construction of SFCC debt service schedules:

(a) The SFCC's portion of the bond sale shall be limited to a twenty (20) year issue, with a level repayment schedule. The maximum annual repayment amount shall not exceed the offer of assistance from the SFCC.

1. The debt service schedule shall have twenty (20) years of payments based on six (6) month intervals or forty (40) payments. If the payments begin so that only one (1) payment is made in the first fiscal year of the schedule, payments may extend over twenty-one (21) fiscal years, if the amounts of the first and last payments combined do not exceed the amount of one (1) annual payment.

2. Annual payments shall be based on a fiscal year. The fiscal year of the SFCC shall begin on July 1 and end the following June 30. All schedules shall be prepared in a way that annual amounts based on a fiscal year are presented in a clear, easy-to-read format while each interest and principal payment is both segregated and totaled by payment period.

(b) The local school district's portion of the bond sale shall be structured to meet the unique financial needs of the district. Debt service on the bonds issued shall include the minimum amount required for eligibility to participate in the program as certified by the Kentucky Board of Education. The minimum term of the local bond issue to meet eligibility criteria shall be twenty (20) years. At the discretion of the local board of education, the bond issue may include a local contribution to debt service in excess of the minimum required, and the length of the local portion of the repayment schedule may exceed twenty (20) years.

(c) Interest collected and accrued on funds derived from the bond sale shall be allocated to the debt service schedules of the school district and the SFCC in the same proportions as its respective participation in the bond issue

1. For allocation purposes, each month shall be calculated as thirty (30) days.

2. The accrued interest allocated to the SFCC shall be calculated by multiplying the number of days times the daily interest.

3. The number of days shall be calculated from the issue date of the bonds to the day the bonds are delivered, excluding the day of settlement.

4. If local payments are involved in the bond issue, the accrued interest available to the local district shall be calculated as required by subparagraph 2 of this paragraph.

(d) The proceeds of the bond sale shall be continually invested until expended on the project or until the project is completed. Any remaining proceeds or investment income received after completion of the project shall be applied to the debt service. Credit against the district's and the SFCC's debt service schedule shall be applied in the same percentage as the participation in the bond issue or, if permitted by the bond resolution or indenture, in excess funds may be applied to an approved project next in order priority.

(e) A certificate of project completion shall be filed with the SFCC by the local school district. The certification shall summarize the application of the bond proceeds, investment earnings, and any remaining funds from either source. The certificate shall also verify the use of cash contribution as may be required for eligibility by the local school district.

(f) Fees paid to a financial advisor shall be in accordance with this paragraph. A fee that exceeds this schedule shall be paid by the local board of education.

1. The maximum fee for services and expenses of a fiscal agent shall be the highest amount according to the following schedule:

- a. \$7,500, for any amount of bonds issued;
- b. \$11 per \$1,000, if the bond amount is under \$1 million;
- c. \$10 per \$1,000, if the bond amount is between \$1 million

and \$2 million; or

- d. \$4 per \$1,000, if the bond amount is over \$2 million.

2. The fee shall:

- a. Be based upon the amount of bonds actually issued;
- b. Include attorney fees, printing of bonds and official statements, advertising the bond issue, travel of the fiscal agent, and other normal expenses related to the bond closing; and
- c. Not include a title search or rating service.

**Section 9. Cumulative Credit.** Any eligible district which fails in any budget period to receive an allocation of state funds sufficient to fund the first priority project on the approved facilities plan of the district may request the approval of the SFCC to accumulate credit subject to the availability of funds, for its unused state allocation for a period not to exceed eight (8) years. Districts which receive funds in excess of those required to complete the first project may apply those funds to the next priority project on their approved facilities plan. If there are insufficient funds to complete the next project, those funds may accumulate as previously outlined. All fund credit accumulated in this manner shall be forfeited at any time that the local district fails to accept an offer of assistance tendered to the district.

**Section 10. Refinancing Savings.** Savings that occur as the result of a refinancing in which the SFCC was a participant shall be divided as follows and in the following order or priority:

(1) If the SFCC's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service can be maintained on behalf of the SFCC, it shall be maintained at the same annual amount; therefore, lowering the local district's account for annual debt service payments by the amount of the total savings on the refinancing. Consequently, the bonding capacity of the local district shall be increased allowing the district to pursue its next facility priority. Any accrued interest shall be deemed a part of the total savings.

(2) If the SFCC's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service paid on behalf of the SFCC is greater than the annual debt service of the refinanced bond issue debt, annual savings generated shall be added to that school district's cumulative credit with the SFCC. These credits shall have no expiration time period for their use.

Section 11. Notwithstanding any other provision of this administrative regulation that conflict with the provisions of this section, and pursuant to the applicable provisions of the American Recovery and Reinvestment Act of 2009, (ARRA), Pub L. 111-5, and Notices 2009-30 and 2009-35 issued by the U.S. Department of the Treasury, the SFCC shall be authorized to take advantage of any and all provisions to maximize and realize benefits and favorable treatment related to the structuring of financial bond transactions to or on behalf of the eligible school districts even if portions of the prospective financing arrangements conflict with any other provision of this administrative regulation.

JONATHAN MILLER, November 12, 2009

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2009, at 11 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol



Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins, Policy Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: Allows school districts to utilize Qualified School Construction Bonds pursuant to the ARRA for the construction, rehabilitation or repair of a public school facility or for the acquisition of land for such a purpose. The necessity of this administrative regulation: See Answer to Section 1(a).

(b) How this administrative regulation conforms to the content of the authorizing statutes: Provides school districts with guidance on the process for bond issues that have School Facilities Service Commission participation.

(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Allows school districts more options and flexibility with their financing of construction, rehabilitation and repairs of public school facilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Provides more flexibility in the bonding process and related financial terms for school district bond issues consistent with ARRA.

(b) The necessity of the amendment to this administrative regulation: Authorizing federal law is time limited. Amendment is needed to take advantage of this narrow window of time.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c).

(d) How the amendment will assist in the effective administration of the statutes: See 1(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts with construction, rehabilitation or repair projects of public school facilities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated agencies identified in question (3) will have to take to comply with this administrative regulation or amendment: No greater action than they are already required to take under current regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ability to potentially obtain financing on more favorable terms.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering has been applied at the application level by the Kentucky Department of Education (KDOE). KDOE has established a minimum threshold level for allocation of the ARRA resources.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Pub.L. No. 111-5 (2009) and U.S. Department of Treasury Notices 2009-30 and 2009-35.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation is expected to reduce the cost of borrowing for qualifying projects over the life of the bonds issued under the provisions of ARRA, but is ultimately dependant upon market forces and the other aspects incident to a sale of bonds. These provisions are only beneficial to school districts.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation does not raise revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See answer to #4a.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): See answer to 4 above.

Other Explanation: N/A

## EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office of Employment and Training (Amendment)

787 KAR 2:020. Confidentiality of records of the Office of Employment and Training.

RELATES TO: KRS 151B.280(3), 195.020, EO-2008-530

STATUTORY AUTHORITY: KRS 151B.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.280(3)(a) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations to protect the confidential nature of records and reports which directly or indirectly identify a client or former client of programs administered by the cabinet. [Executive Order 2008-530, effective June 16, 2008, reorganized the Education Cabinet and changed the name of the cabinet to the new Education and Workforce Development Cabinet.] This administrative regulation establishes which records of the cabinet's Office of Employment and Training shall be as confidential in order to encourage full disclosure of information on the part of job applicants and employers and to provide guidelines to employment service personnel in responding to requests for information.

Section 1. The employment and service records identified in this section shall be confidential and shall not be subject to disclosure, except as provided in KRS 151B.280(3)

(1) Foreign Labor Certification forms relating to the H-2A agricultural or H-2B nonagricultural programs:

(a) ETA 750 Part A, Application for Alien Employment Certification;

(b) ETA 750 Part B, Statement of Qualifications of Alien;

(c) ETA 790, Agricultural and Food Processing Clearance Order;

(d) ETA-9127, Foreign Labor Certification Quarterly Activity Report;

(e) Wage Survey Interview Record;



(f) H-2A (1), Employer-Furnished Housing and Facilities;  
 (g) Migrant and Seasonal Agricultural Worker Protection Act, Housing, Safety and Health Check List;  
 (h) H-2A Field Audit;  
 (i) H-2A #2, Housing Inspection;  
 (j) Kentucky H-2A Alien Labor Certification Program, Customer Satisfaction Survey;  
 (k) H-2A #3, Employment Eligibility Verification Certificate;  
 (l) Kentucky Office of Employment and Training Prevailing Wage Information Request;  
 (m)(4) Kentucky Office of Employment and Training Transmittal of Application for Alien Employment Certification; and  
 (n)(4) Kentucky Office of Employment and Training Recruitment Notification;  
 (2) Work opportunity tax credit:  
 (a) Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit;  
 (b) ETA Form 9061, Individual Characteristics Form Work Opportunity Tax Credit; and  
 (c) ETA Form 9063, Employer Certification Work Opportunity Tax Credit;  
 (3) Trade Adjustment Assistance and Trade Re-Employment Act:  
 (a) TAA/TRA-855, Request for Determination of Entitlement to TAA/TRA;  
 (b) TAA/TRA-855A, Request for Employment Information;  
 (c) TAA/TRA-858, Request for Occupational/Remedial Training and Allowances While in Training;  
 (d) TAA-858B;  
 (e) ETA-9042A, Petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA);  
 (f) TAA Certification of Training Waiver;  
 (g) ATAA-400A, Verification of Employment;  
 (h) ATAA-301, Verification of Employment for Monthly Wage Supplement ATAA;  
 (i) ATAA-400, Request for Alternative Trade Adjustment Assistance (ATAA);  
 (j) ATAA-401, ATAA Trade Certified Employer Information; and  
 (k) Kentucky HCTC-100, Request for Temporary KY-HCTC Bridge Grant Payment;  
 (4) Employ Kentucky Operating System (EKOS):  
 (a) Customer Services-Agency Information Screen;  
 (b) Customer Services-Achievement Objectives Screen;  
 (c) Customer Services-Services Screen;  
 (d) Customer Services-Service History Screen;  
 (e) Customer Services-Enrollments Screen;  
 (f) Customer Services-Outcomes Screen;  
 (g) Customer Services-Comments Screen;  
 (h) Customer Services-Audit Screen;  
 (i) Customer Services-Lit/Num Testing Screen;  
 (j) Customer Services-Follow-Up Screen;  
 (k) Customer Services-Youth ISS Screen;  
 (l) Customer Detail-Gen. Info Screen;  
 (m) Customer Detail-Add'l Info Screen;  
 (n) Customer Detail-Programs & Public Assistance Screen;  
 (o) Customer Detail-Programs & Public Assistance Screen II;  
 (p) Customer Detail-Objective Screen;  
 (q) Customer Detail-Work His. Screen;  
 (r) Customer Detail-Ed/Lic Screen;  
 (s) Customer Detail-Skills Screen;  
 (t) Customer Detail-Saved Searches Screen;  
 (u) Customer Detail-Activities Screen;  
 (v) Customer Detail-Comments Screen;  
 (w) Customer Detail-Tests Screen;  
 (x) Customer Detail-Tests (GATB) Popup Screen;  
 (y) Customer Detail-e3 Info Screen;  
 (z) Comp Assess-Employment Screen;  
 (aa) Comp Assess-Education Screen;  
 (bb) Comp Assess-Financial Screen;  
 (cc) Comp Assess-Family Screen;  
 (dd) Comp Assess-Health Screen;  
 (ee) Comp Assess-Treatments Screen;  
 (ff) Comp Assess-Legal Screen;  
 (gg) Comp Assess-Housing Screen;

(hh) Comp Assess-Transportation Screen; and  
 (ii) Comp Assess-Comments Screen; [and]  
 (5) Workforce Investment Act Title 1, W.I.A. – 20, Eligibility and Verification; and  
(6) OET-EA1, Commonwealth of Kentucky - Microsoft Elevate America Program Voucher Request Form.

Section 2. Access to records of the Division of Unemployment Insurance shall be governed by the provision of KRS 341.190.

Section 3. Sharing of Information as authorized by law. Confidential information shall be shared only in accordance with KRS 341.190.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ETA 750 Part A, "Application for Alien Employment Certification", (rev. 11/07);  
 (b) ETA 750 Part B, Statement of Qualifications of Alien", (rev. 11/07);  
 (c) ETA 790, "Agricultural and Food Processing Clearance Order", (rev. 7/04);  
 (d) ETA-8127, "Foreign Labor Certification Quarterly Activity Report", (rev. 8/05);  
 (e) "Wage Survey Interview Record", (rev. 8/07);  
 (f) H-2A (1), "Employer-Furnished Housing and Facilities", rev. 5/02;  
 (g) "Migrant and Seasonal Agricultural Worker Protection Act, Housing, Safety and Health Check List", rev. 4/04;  
 (h) H-2A, "Field Audit", (rev. 10/04);  
 (i) Kentucky H-2A #2, "Housing Inspection", (rev. 6/02);  
 (j) Kentucky H-2A, "Alien Labor Certification Program, Customer Satisfaction Survey," (rev. 8/07);  
 (k) H-2A, #3, "Employment Eligibility Verification Certificate" (rev. 8/09);  
 (l) Kentucky "Office of Employment and Training Prevailing Wage Information Request", (rev. 12/06);  
 (m)(4) Kentucky "Office of Employment and Training Transmittal of Application for Alien Employment Certification", rev. 5/2008;  
 (n)(4) Kentucky "Office of Employment and Training Recruitment Notification", (rev. 5/08);  
 (o)(4) Form 8850, "Pre-Screening Notice and Certification Request for the Work Opportunity Credit", (rev. 6/07);  
 (p)(e) ETA Form 9061, "Individual Characteristics Form Work Opportunity Tax Credit", (rev. 12/06);  
 (q)(p) ETA Form 9063, "Employer Certification Work Opportunity Tax Credit", (rev. 12/06);  
 (r)(e) TAA/TRA-855, "Request for Determination of Entitlement to TAA/TRA", (rev. 4/06);  
 (s)(4) TAA/TRA-855A, "Request for Employment Information", (rev. 1/05);  
 (t)(e) TAA/TRA-858, "Request for Occupational/Remedial Training and Allowances While in Training", (rev. 8/05);  
 (u)(4) TAA-858B, (rev. 8/05);  
 (v)(4) ETA-9042A, "Petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA)", (rev. 11/05);  
 (w)(4) "TAA Certification of Training Waiver", (rev. 4/07);  
 (x)(4) ATAA-400A, "Verification of Employment", (rev. 4/08);  
 (y)(4) ATAA-301, "Verification of Employment for Monthly Wage Supplement ATAA", (rev. 4/08);  
 (z)(4) ATAA-400, "Request for Alternative Trade Adjustment Assistance (ATTA)", (rev. 4/08);  
 (aa)(4) ATAA-401, "ATAA Trade Certified Employer Information", (rev. 4/08);  
 (bb)(4) Kentucky HCTC-100, "Request for Temporary KY-HCTC Bridge Grant Payment", (rev. 1/08);  
 (cc)(4) "Customer Services-Screens 1 through 11", (rev. 5/02);  
 (dd)(4) "Customer Detail-Screens 1 through 14", (rev. 5/02);  
 (ee)(4) "Comp Assess-Screens 1 through 10", 5/02; and  
 (ff)(4) Workforce Investment Act Title 1, "W.I.A.-20, Eligibility and Verification", (rev. 10/06); and  
(gg) OET-EA1, "Commonwealth of Kentucky - Microsoft Ele-

vate America Program Voucher Request Form, (rev. 10/09).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Employment and Training, 275 E. Main Street, 2nd Floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4.30 p.m.

JENNIFER HICKS, Executive Director

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2009 at 10 a.m. at the offices of the Office of Employment and Training, 275 E. Main Street, 2nd floor, Executive Director's Office, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2009, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Jennifer Hicks, Acting Executive Director, Office of Employment and Training, 275 East Main, 2C; Frankfort, Kentucky 40602, phone (502) 564-5331, fax (502) 564-7452.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contract Person: Jennifer Hicks, Acting Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does. This administrative regulation delineates those records or reports retained by the Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Employment and Training which are confidential and not subject to disclosure to third parties that either directly or indirectly identify clients or former clients of the programs listed within the regulation.

(b) The necessity of this administrative regulation: This administrative regulation is needed to clarify those records or reports which should be confidential.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 151B.280 designates the secretary of the cabinet as the individual responsible for promulgating administrative regulations which protect the confidential nature of reports and records received by the Office of Employment and Training which either directly or indirectly identify a client or former client.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify which records or reports are confidential.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds a record utilized by the cabinet in conjunction with the appropriate federal agency to administer the H-2A program. It also adds a form that will enable the cabinet to implement the Microsoft Elevate America Program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include records relating to programs involving the utilization of foreign labor for agricultural and non-agricultural programs and the implementation of the Microsoft Elevate America Program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 151B.280 provides that the secretary shall be responsible for promulgating administrative regulations which protect the confidential nature of reports and records received by the Office of Employment and Training which either directly or indirectly identify a client or former client.

(d) How the amendment will assist in the effective administration of the statutes. This amendment lists those documents deemed confidential which are utilized by the cabinet in administering the appropriate programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 4,500 current or former clients of the specified programs will be assured that personal, identifying information specific to them shall be protected from unauthorized re-disclosure to third parties. Businesses who hire individuals through the H-2A program also will be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals will have to provide the information on the H-2A, #3, Employment Eligibility Verification Certificate and will have to sign the attestation on the certificate in the presence of the employer. Employers must retain this certificate in lieu of the Form I-9 and must have the individual sign the attestation on the certificate in their presence. Other individuals will have to fill out the Commonwealth of Kentucky-Microsoft Elevate America Program Voucher Request Form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The clients and former clients will be assured that their personal information is protected from unauthorized re-disclosure. Individuals will be able to participate in the Microsoft Elevate America Program and improve their IT skills.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost is associated with this amendment as the procedural change only has a small impact on routine procedure of existing office staff.

(b) On a continuing basis: No cost is associated with this amendment as the procedural change only has a small impact on routine procedure of existing office staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Funding is not necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There are no fees or funding needed to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish or directly or indirectly increase fees.

(9) TIERING. Is tiering applied? This amendment deals with the privacy rights of current and former clients of the cabinet. The confidentiality provisions are applied uniformly to all individuals and information and tiering was not applied.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Employment and Training field offices.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.280, Pub.L. 82-414 (Immigration and Nationality Act), 8 C.F.R. 274a.6(c).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first full year? No cost as the procedural change only has a small impact on routine procedure of existing office staff.

(d) How much will it cost to administer this program for subsequent years? No cost as the procedural change only has a small impact on routine procedure of existing office staff.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Training and Employment Guidance Letter (TEGL) 11-07, Change 1, sec. 4.B.ii

2. State compliance standards. KRS 151B.280

3. Minimum or uniform standards contained in the federal mandate 8 C.F.R. 274a 6(b) and (c)

3. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose different requirements.

4. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The agency is using an alternative to the required Form I-9 because the Form I-9 is an employer based form and the agency is not the employer of the affected individuals.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

#### 811 KAR 1:020. Registration and Identification of horses.

RELATES TO: KRS 230.215(2), 230.260(1), (2), EO 2009-535

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3), EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Commission[Authority] to promulgate administrative regulations prescribing the conditions under which harness racing shall be conducted in Kentucky. EO-2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the commission. This administrative regulation sets forth requirements concerning the registration, ownership, and identification of horses, and the furnishing of information about horses.

Section 1. Registration Any matter relating to registration of standardbred horses shall be governed by the rules of the United States Trotting Association.

Section 2. Bona Fide Owner or Lessee. A horse not under lease shall race in the name of the bona fide owner. A horse under lease shall race in the name of the lessee and a copy of the lease shall be recorded with the commission[Authority].

Section 3. Program Information. (1) A printed program shall be available to the public at any meeting in which horses are raced for purse money. A program shall furnish:

(a) Horse's name and sex;

(b) Color and age;

(c) Sire and dam;

(d) Owner's name; and

(e) Driver's name and colors.

(2) At extended pari-mutuel meetings, the following additional information shall be furnished:

(a) In claiming races, the price for which the horse is entered to be claimed;

(b) A minimum of the last six (6) performances and accurate chart lines. A performance and accurate chart line shall include:

1. Date of race;

2. Place of race;

3. Size of track, if other than a half-mile track;

4. Symbol for free-legged pacers;

5. Symbol for hobbled trotters;

6. Track condition;

7. Type of race;

8. Distance;

9. Fractional times of the leading horse including race time;

10. Post position;

11. Position of.

a. One-quarter (1/4);

b. One-half (1/2);

c. Three-quarters (3/4);

d. Stretch with lengths behind leader; and

e. Finish with lengths behind leader;

12. Individual time of the horse;

13. Closing dollar odds;

14. Name of the driver; and

15. Names of the horses placed first, second, and third by the judges. The standard symbols for breaks and park-outs shall be used, if applicable.

(c) Information indicating drivers racing with a provisional license;

(d) Information indicating pacers that are racing without hobbles;

(e) Information indicating trotters that are racing with hobbles;

(f) Summary of starts in purse races, earnings, and best win time for current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race;

(g) The name of the trainer and stable, if applicable; and

(h) The date, place, time, driver, finish, track condition, and distance on the consolidated line, if the race is not one (1) mile;

(3) All horses drawn into an early closer, a late closer, stake, or futurity shall be listed in the official program

Section 4. Failure to Furnish Reliable Program Information. A person, including a program director or association official who knowingly provides inaccurate information regarding a horse's performance, or who knowingly attempts to have inaccurate information given on a program, shall be considered to be in violation of this administrative regulation and shall be charged pursuant to Section 9(1) of this administrative regulation. The association or program director to a fine not to exceed \$500 and the track or the program director shall be suspended until arrangements are made to provide accurate and reliable program information.

Section 5. Check on Identity of Horse. An association official or member of the commission[Authority], or their respective agents, may call for information concerning the identity and eligibility of a horse on the grounds of a track, and may demand an opportunity to examine that horse for the purpose of establishing the horse's identity or eligibility. If the owner or party controlling that horse shall refuse to supply the information, or to allow an examination, or fail to give satisfactory identification, the horse and the said owner or party shall be barred and suspended or expelled.

Section 6. Identification[Tattoo or Freeze Brand] Requirements. A horse shall not be permitted to start at an extended pari-mutuel meeting if the horse has not been tattooed, freeze branded, or received an electronic horse identification microchip which accurately identifies the horse and is compliant with the international standards ISO 11784[other uniform or standardized means of identification approved by the Authority].

**Section 7. False Chart Lines.** An official, clerk, or person who enters a chart line on an electronic eligibility if the race has not been charted by a licensed charter shall be considered in violation of this administrative regulation.

**Section 8. Withholding Registration.** A person withholding a registration certificate from the owner or lessee of a horse, after proper demand has been made for the return thereof, shall be suspended until such time as the certificate is returned.

**Section 9. Penalties** (1) A person or association that violates Section 4 of this administrative regulation shall have committed a Category 3 violation and shall be subject to the penalties set forth in 811 KAR 1:095, Section 4(3).

(2) A person or association that violates any provision of this administrative regulation, other than Section 4, shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095, Section 4(1).

ROBERT M. BACK, JR., Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: October 27, 2009

FILED WITH LRC: November 2, 2009 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 22, 2009 at 10 a.m., at the Kentucky Horse Racing Commission Office, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by December 15, 2009, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

**CONTACT PERSON:** Nicole S. Biddle, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole S. Biddle, General Counsel

(I) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides an additional form of horse identification, an electronic horse identification microchip which accurately identifies the horse and is compliant with the international standards ISO 11784.

(b) The necessity of this administrative regulation: The regulation is necessary to provide an electronic standardbred racing horse identification option, further promoting the integrity of horse racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky. This regulation establishes additional requirements concerning the identification of standardbred racing horses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides an additional form of identification for standardbred racing horses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment provides an additional identification option, an electronic horse identification microchip compliant with

the international standards ISO 11784.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide an electronic microchip option, in addition to the previous tattoo or freeze brand requirements, contributing to the furtherance of the accurate identification, tracking and well-being of standardbred horses racing in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 grants the commission broad authority to promulgate regulations governing horse racing. This amendment addresses an important issue concerning horse identification and industry integrity.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further the goal of securing the accurate identification, safety and welfare of standardbred horses racing in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 2,000 individuals engaged in standardbred racing who are licensed by the Kentucky Horse Racing Commission. This amendment will provide a less invasive, technologically advanced alternate method for identifying and tracking standardbred race horses.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not anticipate any required actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be imposed to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will provide an additional option of standardbred racing horse identification.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning the electronic microchip apply equally to all participants in horse racing.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation will not impose additional costs upon any government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

# PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction  
Division of Heating, Ventilation and Air Conditioning  
(Amendment)

**815 KAR 8:010. Master heating, ventilation, and air conditioning (HVAC) contractor licensing requirements.**

RELATES TO: KRS 198B.650, 198B.654, 198B. 656, 198B.658, 198B.660, 198B.662, 198B.664, 198B.676, 198B.684, EO 2009-535

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.658, 198B.660(1), (2), 198B.664(3), 198B.676(1), 198B.684, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198.658 requires the board to promulgate an administrative regulation to establish qualifications for licensure and certification. KRS 198B.660(1) and (2) requires the board to establish examination requirements. KRS 198B.664(3) requires the board to establish requirements for license renewal and inactive licenses. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department. KRS 198B.676(1) requires the board to establish fees. This administrative regulation establishes the licensure requirements for HVAC contractors.

Section 1. General Requirements. (1) Definitions. (1) "Journeyman-HVAC mechanic" or "journeyman" is defined by KRS 198B.650(10).

(2) "Master HVAC contractor" or "master" is defined by KRS 198B.650(12).

(3) "Supervise" means exercising authority and responsibility for the direction of all persons engaged in carrying out the actual work on HVAC systems, including the authority to exercise independent judgment regarding activities of others acting under his direction.

Section 2. General Requirements. Continuing education. Each licensee shall complete eight (8) hours of continuing education prior to renewal of the license. The continuing education shall be conducted in accordance with 815 KAR 8:050 [by an approved training agency in accordance with the Standards and Policies for Accredited Organizations: Kentucky HVAC Master Contractor Education].

(2) Supervision. The master shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensee (a) The master shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensee.

(b) The master shall assign each apprentice to the oversight of

one (1) or more journeymen.

(3) Company license. A licensee who is an employee of a company and whose license represents the company shall notify the board, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on his license and paying the change of information fee listed in Section 7(5) of this administrative regulation.

Section 2 [Section 3] Initial Application Requirements. (1) Filing the application.

(a) An applicant seeking a master HVAC contractor license shall submit to the board:

1. A completed Master HVAC Contractor License Application on Form HVAC 1;

2. An [A nonrefundable] initial license application fee of \$250 for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month;

3. Proof of satisfactory completion of the examination required by Section 4 of this administrative regulation;

4. Proof of the applicant's experience as required by KRS 198B.658(1)(b) and this administrative regulation;

5. A passport-sized color photograph of the applicant; and

6. Proof of insurance as required by KRS 198B.668.

(b) If the applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(2) Termination of application. The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 3 Inactive License Status. (1)(a) A licensee may request that a license be placed in inactive status.

(b) A licensee shall not perform HVAC work while the license is inactive.

(2) A master HVAC contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.668 or provide proof to the Department of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) A certified HVAC inspector may be licensed as a master HVAC contractor, but shall place the license in inactive status while having an active HVAC inspector certification.

(4) Performing HVAC work while holding an inactive license shall be grounds for revocation or suspension of all HVAC licenses and certifications held by the licensee.

Section 4. Examination Requirements. An applicant shall take and pass the examination administered in compliance with this section.

(1) A completed Master HVAC Contractor License Exam Application on Form HVAC 6 shall be submitted to the Division of HVAC.

(2) The examination shall be a two (2) part examination and test the applicant's knowledge of:

(a) Codes, standards and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of all types of heating, ventilation and air conditioning systems; and

(b) Law and regulation relating to HVAC business.

(3) Applicants who fail a portion of the examination may reapply within one (1) year to repeat the failed portion of the examination;

(4) Applicants who fail re-examination shall be required to sit for the full examination as required in Section 2 of this administrative regulation;

(5) [The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of all types of HVAC systems.

(2) Reasonable accommodations shall be made if necessary

to provide accessibility to disabled applicants, upon request.

~~(6) [An oral examination shall be given upon good cause shown.~~

~~(3) Except as provided in subsection (11)(8) of this section, an applicant shall successfully complete the examination known as the "Kentucky Master HVAC Contractor Examination" which is developed, administered and scored by the board or its designee [International Code Council] with a passing grade of seventy (70) percent.~~

~~(7)(4) Requests to sit for the examination shall be made directly to the testing facilities approved by the board. A list of facilities and contact information shall be provided to applicants following receipt of the examination application [company].~~

~~(8)(6) The examination fee shall not exceed the cost of the examination [be set by the testing company and paid directly to the testing company].~~

~~(9)(6) The examination shall be provided as set forth in KRS 198B.060 and administered by the testing company as often as necessary but at least four (4) times a year at various locations.~~

~~(10)(7) A passing score on the examination shall be valid for a period of two (2) years.~~

~~(11)(8) Upon application by a testing agency, a national code group or by an applicant for licensure, the department [office] may recognize another examination as equivalent to the examinations administered by the Board [International Code Council]. The person or group submitting the examination shall demonstrate that the examination covers [examinations cover] the same material and requires [require] the same level of knowledge as the board's examination [International Code Council examinations].~~

**Section 5. Experience Requirements.** An applicant for licensure shall meet the experience requirements of this section.

(1) Minimum experience. An applicant shall have the experience required by KRS 198B.658(1)(b).

(2) Records of experience. An applicant's experience shall be listed on the application form. Proof of listed experience shall be provided by W-2s or an affidavit by a master HVAC contractor. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

**Section 6. Renewal and Reactivation Requirements and Procedures.** (1) Filing for renewal. A master HVAC contractor shall submit to the department:

(a) A completed renewal application card;

(b) A renewal fee of \$250 made payable to the "Kentucky State Treasurer";

(c) Proof of annual continuing education attendance in accordance with Section 1 of this administrative regulation; and

(d) Completed continuing provider evaluation form(s) for each continuing education class attended.

(2) Except for licenses placed in inactive status, in accordance with subsection (6)(6) of this section, application for license renewal shall be filed by each licensee no later than the last day of the licensee's birth month. Licenses shall be renewed each year.

(3)(2) A renewal fee of \$250 shall be paid prior to renewal. The department [office] shall send renewal application cards to each licensee each year to be returned with the required fee.

(4)(3) Renewal application cards filed late, but no more than ninety (90) days after the last day of the licensee's birth month, shall be accepted, but a restoration fee, in accordance with Section 7(1) of this administrative regulation, shall be added to the renewal fee.

(5)(4) Failure to renew ninety-one (91) days after the last day of the licensee's birth month shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(6)(6) Licenses which have been placed in inactive status shall be exempt from annual renewal. An inactive license shall be reactivated upon payment of the annual renewal fee, the reactivation fee [a renewal fee for the year reactivated and the reactivation fee] and upon compliance with the continuing education requirements established in 815 KAR 8:050 for each year the license was in inactive status [of inactive status].

~~(7)(6) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.~~

~~(8)(7) The application for renewal or reactivation of a licensed master HVAC contractor shall be denied if the applicant fails to:~~

~~(a) Pay the fees required for renewal, reactivation and restoration, if applicable;~~

~~(b) Comply with the continuing education requirements established in Section 1(1)(2)(2) of this administrative regulation; or~~

~~(c) Provide the current insurance certificate required by KRS 198B.668~~

~~(9)(8) A licensee who has not previously provided a passport-sized color photograph shall provide one (1) with the licensee's next renewal application.~~

**Section 7. Special Service Fees.** In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.

(2) Inactive status fee. A licensee may place his license in "inactive status" upon payment of twenty (20) dollars. Inactive status shall be maintained until the licensee requests reactivation in accordance with Section 6(6)(6) of this administrative regulation.

(3) Reactivation fee. A license shall be reactivated upon payment of a fee of twenty (20) dollars and compliance with Section 5(6)(6) of this administrative regulation.

(4) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee

(5) Change of information fee. The fee for the change of information required by Section 1(3)(2)(3) of this administrative regulation shall be fifteen (15) dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

**Section 8. Revocation or Suspension of Licenses.** A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.

**Section 9. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) Form HVAC 1, Master HVAC Contractor License Application, March 2005; and

(b) Form HVAC 6, Master HVAC Contractor License Examination Application, November 2009; and

(c) Standards and Policies for Accredited Organizations: Kentucky HVAC Master Contractor Education, June 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department [Office] of Housing, Buildings and Construction, HVAC Division, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Commissioner

ROBERT VANCE, Secretary

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on December 21, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at



the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

**CONTACT PERSON:** Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements for HVAC Contractors.

(b) The necessity of this administrative regulation: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.658 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate an administrative regulation to establish qualifications for licensure and certification; KRS 198B.660 requires the board to establish examination requirements; KRS 198B.664 requires the board to establish requirements for license renewal and inactive licenses; and 198B.676, requires the Board to establish licensure requirements for master HVAC contractors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amended administrative regulation updates the continuing education requirements to be in conformance with newly established regulations, clarifies initial application fee provisions, and establishes a master HVAC contractor license examination application.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the qualifications and requirements for master HVAC contractors as required by KRS 198B.654, 198B.658, 198B.660, 198B.664, 198B.676 and 198B.684.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: Amends various sections of the master HVAC contractor licensing requirements, as approved by the Board of Heating, Ventilation and Air Conditioning Contractors.

(b) The necessity of the amendment to this administrative regulation: To implement master HVAC contractor licensing requirement amendments, as approved by the Board of Heating, Ventilation and Air Conditioning Contractors.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.654, 198B.658, 198B.660, 198B.664, 198B.676 and 198B.684 mandate that the Board of Heating, Ventilation and Air Conditioning Contractors establish the master HVAC contractor licensing requirements. These amendments were approved by the board to update and amend the current master HVAC contractor licensing requirements.

(d) How the amendment will assist in the effective administration of the statutes: Amendments to the master HVAC contractor licensing requirements are intended to assist the HVAC industry by providing clear standards for obtaining and maintaining a master HVAC contractor license.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Division of HVAC, master HVAC contractor license holders, master HVAC contractor applicants.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Master HVAC contractor license applicants will be required to submit a completed Master HVAC Contractor License Exam Application, as well as the Master HVAC Contractor License Application; applicants who fail a portion of the two part examination may reapply within one (1) year to retest on

the failed portion; and initial license fees may be prorated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment results in no additional or new costs to master HVAC contractor license holders or applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include pro-rata of initial license fees and the ability for an applicant to retest on a failed portion of the two part examination

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no additional or new costs associated with the implementation of the administrative regulation amendments.

(b) On a continuing basis: There are no additional or new costs associated with implementation of the amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing HVAC funds will be utilized in administration of this master HVAC Contractor License Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Implementation of this amended administrative regulation will not necessitate an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not establish new fees nor will it directly or indirectly increase existing fees.

(9) TIERING Is tiering applied? Tiering is not applied to this amended administrative regulation; all master HVAC contractor license holders and applicants are treated equally under this administrative regulation.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of HVAC will be impacted by this amended administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.654, 198B.658, 198B.660, 198B.664, 198B.676, and 198B.684.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment establishes no new fees nor creates new expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. This regulatory amendment will result in no new revenues. This amendment does not amend the licensure application, renewal or restoration fees for master HVAC contractors. For this reason, the anticipated revenues and expenditures of the master HVAC contractor licensing program are anticipated to remain in line with historical figures.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See "Note" below.

(c) How much will it cost to administer this program for the first year? See "Note" below.

(d) How much will it cost to administer this program for subsequent years? See "Note" below.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral



Expenditures (+/-): Neutral

Other Explanation: This amendment does not change or amend the licensure application, renewal or restoration fees for master HVAC contractors. For this reason, the anticipated revenues and expenditures of the master HVAC contractor licensing program are anticipated to remain in line with historical figures.

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Heating, Ventilation and Air Conditioning**  
**(Amendment)**

**815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.**

RELATES TO KRS 198B.650, 198B.654, 198B.656, 198B.658, 198B.660, 198B.662, 198B.664, 198B.676, 198B.684, EO 2009-535

STATUTORY AUTHORITY: KRS 198B.654(1) 198B.658, 198B.660(1), (2), 198B.664(3), 198B.676(1), 198B.684, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.658 requires the board to promulgate an administrative regulation to establish qualifications for licensure and certification. KRS 198B.660(1) and (2) requires the board to establish examination requirements. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department. KRS 198B.664(3) requires the board to establish requirements for license renewal and for inactive licensees. KRS 198B.676(1) requires the board to establish fees. This administrative regulation establishes the licensure requirements for journeyman HVAC mechanics.

Section 1. [Definitions. (1) "HVAC" means heating, ventilation, and air conditioning and includes the following components:

- (a) ~~Air conditioning or cooling system, as defined by KRS 198B.650(1);~~
- (b) ~~Burner service, as defined by KRS 198B.650(4);~~
- (c) ~~Heating system, as defined by KRS 198B.650(8);~~
- (d) ~~Hydronic system, as defined by KRS 198B.650(9); and~~
- (e) ~~Ventilation system, as defined by KRS 198B.650(15).~~
- (2) ~~"Journeyman HVAC mechanic" or "journeyman" is defined by KRS 198B.650(10).~~

Section 2. [General Requirements. (1) Continuing education. Each journeyman licensee shall complete eight (8) hours of continuing education prior to renewal of the license. The continuing education shall be conducted in accordance with 815 KAR 8:050 by an authorized training provider in accordance with the Policies and Standards for Accredited Individuals and Organizations: Kentucky HVAC Journeyman Education].

(2) Supervision. The journeyman shall be physically on site, personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration and repair of HVAC systems and shall otherwise operate under the general direction of the master.

Section 2. [3.] Initial Application Requirements. (1) Filing the application. An applicant seeking a journeyman HVAC mechanic license shall submit to the board:

- (a) A completed Journeyman Mechanic HVAC License Application on Form HVAC 2;
- (b) An [A nonrefundable] initial license application fee of fifty (50) dollars for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month;
- (c) Proof of satisfactory completion of the examination required

by Section 3[4] of this administrative regulation,

(d) Proof of the applicant's experience as required by KRS 198B.658(2)(b) and Section 4[5] of this administrative regulation;

(e) A passport-sized color photograph of the applicant.

(2) Termination of application. The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void

Section 3 [4.] Examination Requirements. An applicant shall take and pass the examination administered in compliance with this section. (1) A completed Journeyman HVAC Mechanic License Examination Application on Form HVAC 7 shall be submitted to the division;

(2) [(4)] The examination shall test the applicant's basic knowledge of codes, standards and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of HVAC systems.

(3) [(2)] Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

(4) [An oral examination shall be given upon good cause shown.

(3) Except as provided by subsection (6) of this section, an applicant shall successfully complete the examination known as the "Kentucky Journeyman HVAC Mechanic Examination" which is developed, administered, and scored by the board or its designee [International Code Council] with a passing score of seventy (70) percent.

(5) [(4)] Requests to sit for the examination shall be made directly to the testing facilities approved by the board. A list of facilities and contact information shall be provided to applicants following receipt of the examination application.

(6) The examination fee shall be \$100.

(7) [International Code Council.

(5) A passing score on the examination shall be valid for a period of two (2) years.

(8) [(6)] Upon application by a testing agency, a national code group or by an applicant for licensure, the department [office] may recognize another examination as equivalent to the examinations administered by the board [International Code Council]. The person or group submitting the examination shall demonstrate that the examinations cover the same material and require the same level of knowledge as the board's [International Code Council] examinations.

Section 4 [5.] Experience Requirements. An applicant for licensure shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have the experience required by KRS 198B.658(2)(b).

(2) Records of experience. Proof of listed experience shall be provided by W-2s or an affidavit from a master HVAC contractor or the equivalent. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

(3) A minimum of 3,000 work hours shall be completed as part of the two (2) years experience requirement of subsection (1) of this section.

Section 5 [6.] Renewal Requirements and Procedures. (1) Filing for renewal. A journeyman HVAC mechanic shall submit to the department;

(a) A completed renewal application card;

(b) A renewal fee of fifty (50) dollars made payable to the "Kentucky State Treasurer";

(c) Proof of annual continuing education attendance in accordance with Section 1 of this administrative regulation; and

(d) Completed continuing provider evaluation form(s) for each continuing education class attended.

(2) A renewal fee of fifty (50) dollars shall be paid prior to renewal. The department [office] shall send renewal cards to each licensee to be returned no later than the last day of the licensee's birth month. Licenses shall be renewed each year.

(3) [(2)] A journeyman HVAC license renewal filed late, but no more than ninety (90) days after the last day of the licensee's birth

month, shall be accepted, but a restoration fee, in accordance with Section 7(1) of this administrative regulation, shall be added to the renewal fee.

(4)(3) Failure to renew ninety-one (91) days after the last day of the licensee's birth month shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(5)(4) Requests for renewal of a licensed journeyman HVAC mechanic shall be denied if the applicant fails to:

(a) Pay the fees required for renewal and restoration, if applicable; or

(b) Comply with the continuing education requirements.

(6)(5) A licensee who has not previously provided a passport-sized color photograph shall provide one (1) with the licensee's next application for renewal.

(7) Continuing education requirements shall not be required for renewal provided the initial license was issued within twelve (12) months of renewal.

Section 6.[7-] Special Services and Fees. In addition to the initial license application fee, examination fee, and renewal fee, the following special fees shall be applied:

(1) Restoration fee. The fee for renewal of expired licenses, pursuant to Section 6(2) of this administrative regulation, shall be twenty-five (25) dollars.

(2) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

Section 7.[8-] Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B 672.

Section 8.[9-] Incorporation by Reference (1) The following material is incorporated by reference:

(a) Form HVAC 2, Journeyman Mechanic HVAC License Application, March 2005; and

(b) Form HVAC 7, Journeyman HVAC Mechanic License Examination Application, November, 2009 [Policy and Standards for Accredited Individuals and Organizations: Kentucky HVAC Journeyman Education, June 2005.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department[Office] of Housing, Buildings and Construction, HVAC Division, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Commissioner

ROBERT VANCE, Secretary

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements for Journeyman HVAC mechanics.

(b) The necessity of this administrative regulation: KRS 198B.654 requires the board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.658 requires the board of Heating, Ventilation and Air Conditioning Contractors to promulgate an administrative regulation to establish qualifications for licensure and certification; KRS 198B.660(1) and (2) requires the board to establish examination requirements; KRS 198B.664 (3) requires the board to establish requirements for license renewal and inactive licenses; 198B.676 (1) requires the board to establish licensure requirements for journeyman HVAC mechanics; and 198B 684 authorizes the Board to establish continuing education requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amended administrative regulation updates the continuing education requirements to be in conformance with newly established regulations, clarifies initial application fee provisions, and establishes a journeyman HVAC mechanic license examination application.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the qualifications and requirements for Journeyman HVAC mechanics as required by KRS 198B.654, 198B.658, 198B.660, 198B.664, 198B.676 and 198B.684.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. Amends various sections of the Journeyman HVAC mechanic licensing requirements, as approved by the Board of Heating, Ventilation and Air Conditioning Contractors.

(b) The necessity of the amendment to this administrative regulation: To implement Journeyman HVAC mechanic licensing requirement amendments, as approved by the Board of Heating, Ventilation and Air Conditioning Contractors.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.654, 198B.658, 198B.660, 198B.664, 198B 676 and 198B.684 mandate that the Board of Heating, Ventilation and Air Conditioning Contractors establish the Journeyman HVAC mechanic licensing requirements. These amendments were approved by the board to update and amend the current journeyman HVAC mechanic licensing requirements.

(d) How the amendment will assist in the effective administration of the statutes: Amendments to the journeyman HVAC mechanic licensing requirements are intended to assist the HVAC industry by providing clear standards for obtaining and maintaining a journeyman HVAC mechanic license.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Division of HVAC, journeyman HVAC mechanic license holders, journeyman HVAC mechanic applicants.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Journeyman HVAC mechanic license applicants will be required to submit a completed Journeyman HVAC Mechanic License Exam Application, as well as the Journeyman HVAC Mechanic License Application, and initial license fees may be prorated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment results in no additional or new costs to journeyman HVAC mechanic license holders or applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include proration of initial

license fees and the waiver of continuing education requirements for initial license renewal if the license was issued with twelve (12) months of the initial renewal date.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no additional or new costs associated with the implementation of the administrative regulation amendments.

(b) On a continuing basis: There are no additional or new costs associated with implementation of the amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing HVAC funds will be utilized for the administration of the Journeyman HVAC Mechanics' Licensing Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Implementation of this amended administrative regulation will not necessitate an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not establish new fees nor will it directly or indirectly increase existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this amended administrative regulation; all journeyman HVAC mechanic license holders and applicants are treated equally under this administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of HVAC will be impacted by this amended administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.654, 198B.658, 198B.660, 198B.664, 198B.676, and 198B.684.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment establishes no new fees nor creates new expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. This regulatory amendment will result in no new revenues. This amendment does not amend the licensure application or renewal fees for journeyman HVAC mechanics. For this reason, the anticipated revenues and expenditures of the journeyman HVAC mechanics' licensing program are anticipated to remain in line with historical figures.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See "Note" below.

(c) How much will it cost to administer this program for the first year? See "Note" below.

(d) How much will it cost to administer this program for subsequent years? See "Note" below.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This amendment does not change or amend the licensure application, renewal or restoration fees for journeyman HVAC mechanics. For this reason, the anticipated revenues and expenditures of the journeyman HVAC mechanic

licensing program are anticipated to remain in line with historical figures.

#### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

#### 815 KAR 20:090. Soil, waste, and vent systems.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200, EO 2009-535

STATUTORY AUTHORITY: KRS 318.130, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky for soil, waste, and vent systems. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation identifies and publishes the manufacturer's specification number of the material accepted in the installation and design of soil, waste and vent systems in each type of plumbing system.

Section 1. Grades and Supports of Horizontal Piping. (1) Horizontal piping shall run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot, and shall be supported or anchored in accordance with the manufacturer's recommendations but shall not exceed ten (10) feet in length.

(2) A stack shall be supported at its base and each pipe shall be rigidly secured.

(3) No-hub pipe and fittings shall be supported at each joint of pipe and fittings.

(4) Polyvinyl chloride and acrylonitrilebutadiene-styrene schedule forty (40) horizontal piping shall be supported at:

(a) Intervals not to exceed four (4) feet;

(b) At the base of each vertical stack; and

(c) At each trap branch as close to the trap as possible.

(5) Polyethylene pipe and fittings shall be continuously supported with a V channel.

(6) A stack shall be rigidly supported at its base and at the floor level.

Section 2. Change in Direction. (1) Except as provided in subsections (2), (3), or (4) of this section, a change in direction shall be made by the appropriate use of a forty-five (45) degree wye, half-wye (1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bend.

(2) A single sanitary tee may be used in a vertical stack.

(3) A sanitary tee may be turned on its back or side at an angle of not more than forty-five (45) degrees.

(4) A double sanitary tee may be used on a vertical soil, waste and vent line.

Section 3. Prohibited Fittings. The following shall be prohibited:

(1) A double hub bend and double hub tee or inverted hub on a sewer, soil or waste line;

(2) The drilling and tapping of a house sewer or house drain, soil, waste or vent pipe;

(3) The use of a saddle hub; and

(4) Pipe installed with a hub or restriction that reduces the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of a drainage system, a dead end shall not be used.

Section 5. Protection of Material. (1) A pipe passing under or through a wall shall be protected from breakage.

(2) A pipe passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. (1) Main or branch soil, waste and vent pipes and fittings within or underneath a building shall be:

- (a) Hub and spigot extra heavy or service weight cast iron;
  - (b) No-hub service weight cast iron;
  - (c) Galvanized steel;
  - (d) Galvanized wrought iron;
  - (e) Lead;
  - (f) Brass;
  - (g) Types K, L, M, and DWV copper;
  - (h) Standard high-frequency welded tubing produced and labeled with the latest ASTM specifications;
  - (i) Types R-K, R-L, R-DWV brass tubing;
  - (j) DWV brass tubing produced and labeled as ASTM B587;
  - (k) Seamless stainless steel tubing;
  - (l) Grade G or H produced and labeled as ASTM A-312;
  - (m) Polyvinyl chloride schedule 40 or 80 produced and labeled as ASTM D2665, D1784, and F-891;
  - (n) Coextruded composite PVC pipe produced and labeled ASTM F-1488;
  - (o) Acrylonitrile-butadiene-styrene schedule 40 or 80 produced and labeled as ASTM D2661 or F-628; or
  - (p) Silicon iron or borosilicate.
- (2) A main or branch soil waste and vent pipe and fittings underground shall either be:
- (a) Hub and spigot extra heavy or service weight cast iron;
  - (b) No-hub service weight cast iron;
  - (c) Type K or L copper pipe;
  - (d) Type R-K, R-L brass tubing;
  - (e) Lead; or
  - (f) Silicon iron or borosilicate pipe and fittings or plastics DWV identified in this section.

(3) Underground waste pipe installed beneath a concrete slab shall not be less than two (2) inches in diameter and shall extend no less than twelve (12) inches above the concrete slab.

Section 7. Size of Soil and Waste Pipe per Fixture Unit on One Stack. (1) The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

Pipe Size (In Inches)	Maximum De- veloped Length	Fixture Units
1 1/4	25 ft.	1
1 1/2	60 ft.	2
2	80 ft.	6
2 1/2	100 ft.	12
3	225 ft.	36
4	unlimited	172
5	unlimited	342
6	unlimited	576
8	unlimited	1600
10	unlimited	2900
12	unlimited	4600

(2) A water closet shall be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch line.

Section 8. Soil and Vent Stacks. (1) A building in which a plumbing fixture is installed shall have a soil or waste and vent stack, or stacks, extending full size through the roof.

(2) A soil or waste and vent stack shall be as direct as possible and free from sharp bends or turns.

(3) The required size of the soil or waste and vent stack shall be determined from the total fixture units connected to the stack in accordance with Section 7 of this administrative regulation except that more than three (3) water closets shall not discharge into a three (3) inch stack.

Section 9. Future Openings. An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste and vent piping and shall comply with this administrative regulation.

Section 10. House Drain. (1) The size of the house drain shall

be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain may be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this administrative regulation, without counting toward the fixture units of the system.

Section 11. Soil and Waste Stacks, Fixture Connections.

(1) A soil and waste stack or branch shall have correctly faced inlets for fixture connections.

(2) Each fixture shall be independently connected to the soil or waste system.

(3) A fixture connection to a water closet, floor-outlet pedestal sink, pedestal urinal, or other similar plumbing fixture shall be:

- (a) Cast iron;
- (b) Lead;
- (c) Brass;
- (d) Copper; or
- (e) Plastic closet bend.

(4) A three (3) inch closet bend shall have a four (4) inch by three (3) inch flange.

Section 12. Changing Soil and Vent Pipes in an Existing Building. In an existing building if the soil, waste and vent piping is not extended undiminished through the roof or if there is sheet metal soil or waste piping and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for new work.

Section 13. Prohibited Connections. (1) A fixture connection shall not be made to a lead bend or a branch of a water closet or a similar fixture.

(2) A vent pipe above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

Section 14. Soil, Waste and Vent Pipe Protected. (1) Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost.

(2) The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 15. Roof Extensions. (1) A roof extension of soil and waste stacks shall run full size at least one (1) foot above the roof.

(2) If the roof is used for purposes other than weather protection, the extension shall not be less than five (5) feet above the roof.

(3) A stack of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof.

(4) If a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

Section 16. Terminals. If a roof terminus of a stack or vent is within ten (10) feet of the top, bottom, face or side edge of a door, window, scuttle, or air shaft, and not screened from the opening by a projecting roof or building wall, it shall extend at least two (2) feet above the top edge of the window or opening.

Section 17. Terminals Adjoining High Buildings. (1) Soil, waste or vent pipe extension of a new or existing building shall not run or shall not be placed on an outside wall, but shall be installed inside the building unless the piping is protected from freezing.

(2) If the new building is built higher than the existing building, the owner of the new building shall not locate a window within ten (10) feet of an existing vent stack on the lower building.

Section 18. Protected Traps and Vents. (1) A fixture trap shall

be protected against siphonage and backpressure.

(2) Air circulation shall be assured by means of an individual vent.

(3) A crown vent shall not be permitted.

**Section 19. Distance of Trap from Vent.** (1)(a) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening.

(b) The fixture trap vent, except for a water closet or a similar fixture, shall not be below the dip of the trap, and each ninety (90) degree turn in the waste line of the main waste, soil, or vent pipe shall be washed.

(c) A fixture trap shall have a vent located with a developed length not greater than that set forth in the table below:

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft. 6 in.
1 1/2	3 ft. 6 in.
2	5 ft.
3	6 ft.
4	10 ft.

(2) A fixture branch on a water closet shall not be more than four (4) feet six (6) inches.

**Section 20. Main Vents to Connect at Base.** (1) All main vents or vent stacks shall.

(a) Connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch; and

(b) Extend undiminished in size through the roof or be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture.

(2)(a) Except as provided in paragraph (b) of this subsection, if it becomes necessary to increase the size of a vertical vent stack, the entire stack shall be increased from its base.

(b) If the height of a stack which does not serve as the main vent is less than forty-five (45) feet, it shall not be required to be increased from its base.

**Section 21. Vents; Required Sizes.** (1) The required size of a vent or vent stack shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, if necessary, between permissible length of vent given in the following table:

MAXIMUM PERMISSIBLE LENGTHS OF VENTS		
Pipe Size (In Inches)	Maximum Length (In Feet)	Fixture Units
1 1/4	30	2
1 1/2	150	10
2	200	24
2 1/2	250	36
3	300	72
4	400	240
5	800	720

(2) Except for a residential installation, if a fixture opening is installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste system, or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

**Section 22. Branch and Individual Vents.** A branch or individual vent shall not be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

**Section 23. Vent Pipes Grades and Connections.** (1) A vent or branch vent pipe shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity.

(2) If a vent pipe connects to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe,

and the vent pipe shall rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main, waste, soil or vent.

**Section 24. Vents Not Required; Backwater Traps, Subsoil Catch Basin and Basement Floor Drains.** (1) A vent shall not be required on a backwater trap, subsoil catch basin trap or a basement floor drain if the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet.

(2) A basement floor drain shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

**Section 25. When Common Vent Permissible.** If two (2) water closets, two (2) lavatories or two (2) fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the prescribed distance as set forth in Section 19 of this administrative regulation measured along the center line of the flow of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with this administrative regulation.

**Section 26. Floor Drain Individual Vent Not Required.** (1) A manufacturer's floor drain shall not require an individual vent if placed on a waste line for a floor drain within the prescribed distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack.

(2) An open receptacle may be connected to a floor drain line without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

**Section 27. Floor Drain.** A floor drain or service sink installed on the operational floor level of a sewage and water treatment plant facility which discharges into an open sump and is not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

**Section 28. House Drain Material.** A house drain shall be:

- (1) Extra heavy cast iron;
- (2) Service weight cast iron;
- (3) Brass;
- (4) Type (K) or (L) copper;
- (5) Lead;
- (6) ABS or PVC plastic; or
- (7) Duroiron.

**Section 29. Indirect Waste Connections.** (1) Waste pipe from a refrigerator drain or other receptacle where food is stored or waste water from a water cooled compressor shall connect indirectly with the house drain, soil or waste pipe.

(2) The drain shall be vented to the outside air.

(3) The waste pipe shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with this administrative regulation.

(4) The connection shall not be located in an inaccessible or unventilated area.

**Section 30. Bar and Soda Fountain Wastes.** (1)(a) A bar and soda fountain waste, sink or receptacle shall have a one and one-half (1 1/2) inch P trap and branches.

(b) The main shall not be less than two (2) inches.

(c) The fresh air pipe shall not be less than one and one-half (1 1/2) inches.

(d) The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building.

(2) A floor receptor or floor sink may be installed flush with the finished floor if it has a full grate with an attached funnel to receive indirect waste.

(3) A floor receptor or floor sink installed specifically for the

indirect wastes from a tilting braising pan, tilting kettle, or other similar equipment may be installed level with or slightly recessed in the floor if the receptor is equipped with a proper strainer and receives no other indirect waste.

**Section 31. Open Receptacles.** Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground if it discharges into a septic system.

**Section 32. Refrigerator and Condensate Wastes.** (1) A refrigerator or condensate discharge waste pipe shall not be less than:

- (a) One and one-half (1 1/2) inches for one (1) to three (3) openings; and
- (b) Two (2) inches for four (4) to eight (8) openings.
- (2) Each opening shall be trapped
- (3) The waste piping shall be equipped with sufficient cleanouts to allow for thorough cleaning.

**Section 33. Overflow Pipes.** (1) Waste from a water supply tank or exhaust from a water lift shall not be directly connected to a house drain, soil, or waste pipe.

(2) The waste pipe shall discharge upon a roof or into a trapped open receptacle.

**Section 34. Acid and Chemical Wastes.** (1) A corrosive liquid shall not be permitted to discharge into the soil, waste or sewer system unless otherwise permitted by this administrative regulation.

(2) The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

**Section 35. Laboratory Waste Piping.** (1) Laboratory waste piping shall be sized in accordance with this administrative regulation and each fixture shall be individually trapped.

(2) A continuous waste and vent pipe system may be used, if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated if the pit has a ventilated cover.

(3) If a dilution pit is not required and is not used, the fixtures shall be individually vented.

(4) If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof.

(5) A fixture branch exceeding more than the distance specified in the table in Section 19 of this administrative regulation from the main shall be revented and the distance shall be measured from the center of the main to the center of the vertical riser.

(6)(a) A fixture connection shall rise vertically to a height so that the trap shall not be lower than twelve (12) inches from the bottom of the sink.

(b) Two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

**Section 36. Acid Waste Piping.** (1) Underground piping for acid wastes shall be:

- (a) Extra heavy salt glazed vitrified pipe;
- (b) Silicon Iron;
- (c) Lead;
- (d) Polyethylene pipe and fittings produced and labeled as ASTM D204;

(e) Polypropylene pipe produced and labeled as ASTM D4101;

(f) Polypropylene pipe and fittings produced and labeled as ASTM F-1412; or

(g) Chlorinated Poly Vinyl Chloride (CPVC) Chemical Waste Drainage Systems meeting ASTM F-2618; or

(h) Other materials approved in 815 KAR 20.020, Section 5.

(2) Piping for acid wastes and vents above ground shall be:

- (a) Silicon Iron;
- (b) Lead;

(c) Borosilicate;

(d) Polyethylene pipe produced and labeled as ASTM D-1204-62T;

(e) Polypropylene pipe produced and labeled as ASTM D-4101-85, or

(f) Filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (green or poly thread); or

(g) Chlorinated Poly Vinyl Chloride (CPVC) Chemical Waste Drainage Systems meeting ASTM F-2618.

**Section 37. Special Vents.** A flat vent may be allowed if the design of the building prohibits the type of venting required by this administrative regulation.

**Section 38. Basement Floor Drains and Sanitary Sewage Systems.** (1) Except for a basement floor drain exempted under subsection (2) of this section, a basement floor drain shall be connected to the house sewer and properly trapped and vented as set forth in this administrative regulation.

(2)(a) A basement floor drain in a single family dwelling shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system. (b) If the drain is not to be connected to the house sewer, the installation shall also be exempt from the waste, trap and venting provisions of the State Plumbing Code.

RICHARD MOLONEY, Commissioner

ROBERT VANCE, Secretary

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on December 22, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies and publishes the manufacturer's specification number of the material accepted in the installation and design of soil, waste and vent systems in each type of plumbing system.

(b) The necessity of this administrative regulation: Identifies acceptable methods, standards and materials to be used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Department of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to be used within the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Deletes standards and pipe that no longer exist and allows new material to be

used.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It will add another product, Chlorinated Poly Vinyl Chloride (CPVC) Chemical Waste Drainage System meeting ASTM F-2618 to be used under the Kentucky Plumbing Code.

(b) The necessity of the amendment to this administrative regulation: The regulation amendment allows a new material to be used.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will allow a new material to be used.

(d) How the amendment will assist in the effective administration of the statutes: The department and plumbers will be assisted by utilizing a new material.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Division of Housing, Buildings and Construction, plumbers and plumbing inspectors will be affected by the present amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Plumbers must continue to utilize accepted materials for acid waste piping and with this amendment have another material acceptable under the State Plumbing Code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is associated with the changes of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will allow plumbers to utilize a new product for chemical waste drainage.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding associated with the amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no necessity to increase fees or funding for the implementation of this regulatory amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased with this regulatory amendment.

(9) TIERING: Is tiering applied? No tiering is applied as this amendment as all plumbers will equally affected by the approval of the new material.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing, plumbers and plumbing inspectors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Authority to promulgate and amend the State Plumbing Code is conferred upon the Department of Housing, Buildings and Construction by KRS 318.130 with comments and recommendation by the Plumbing Code Committee.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This

amendment will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulatory amendment will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation allows plumbers to utilize a new material.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

900 KAR 7:030. Data reporting by health care providers.

RELATES TO: KRS Chapter 13B, 216.2920-216.2929

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

NECESSITY, FUNCTION, AND CONFORMITY: KRS

216.2925 requires that the Cabinet for Health and Family Services to promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the Commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions. (1) "Agent" means any entity with which the cabinet may contract to carry out its statutory mandates, and which it may designate to act on behalf of the cabinet to collect, edit, or analyze data from providers.

(2) "Ambulatory facility" is defined by KRS 216.2920(1).

(3) "Cabinet" is defined by KRS 216.2920(2).

(4) "Coding and transmission specifications" or "Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals" or "Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities" means the document containing the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(5) "Hospital" is defined by KRS 216.2920(6).

(6) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for inpatient services a hospital may provide in swing, nursing facility, skilled, intermediate or personal care beds, and hospice care.

(7) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(8) "Outpatient services" means services performed on an outpatient basis in a hospital in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility in accordance with Section 4 of this administrative regulation.



(9) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals or the Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities.

(10) "Record" means the documentation of a hospitalization or outpatient service in the format prescribed by the Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals or the Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(11) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

**Section 2. Medicare Provider-Based Entity** A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

**Section 3. Data Collection for Hospitals.** (1) Inpatient Hospitalization records. Hospitals shall document every hospitalization they provide on a Standard Billing Form and shall, from every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(2) Outpatient services records.

(a) Hospitals shall document on a Standard Billing Form the outpatient services, as defined in Section 1 of this administrative regulation, they provide and shall from every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(b) Hospitals shall submit records that contain the required outpatient services procedure codes specified in the Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals.

(3) Data collection on patients. Hospitals shall submit required data on every patient as provided in Section 13 of this administrative regulation, regardless of the patient's billing or payment status.

**Section 4. Data Collection for Ambulatory Facilities.** (1) Outpatient Services Records.

(a) Ambulatory facilities shall document on a Standard Billing Form the outpatient service, as defined in Section 1 of this administrative regulation, they provide and shall, for every record, copy and provide to the cabinet the data specified in Section 14 of the administrative regulation.

(b) Ambulatory facilities shall submit records that contain the required outpatient services procedure codes specified in the Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities.

(2) Data collection on patients. Ambulatory facilities shall submit required data on every patient as provided in Section 14 of this administrative regulation, regardless of the patient's billing or payment status.

**Section 5. Data Finalization and Submission by Providers.** (1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless of whether the record has actually been submitted to a payor.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payor.

(c) Data on hospitalizations shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation where one (1) provider provides services under contract or other arrangement

with another provider, responsibility for providing the specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating data with other hospital records that do not contain physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by hospitals shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals.

(b) Records submitted to the cabinet by ambulatory facilities shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities.

(c) All providers shall submit records on computer-readable electronic media.

(d) Providers shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's date log and a verification notice.

**Section 6. Data Submission Timetable for Providers.** (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data, which during that quarter became final as specified in Section 5(1) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. Providers may submit data after records become final as specified in Section 5(1) of this administrative regulation and at a reasonable frequency convenient to a provider for accumulating and submitting batch data.

**Section 7. Data Corrections for Hospitals.** (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Inpatient and Outpatient Coordinator Manual for Kentucky Hospitals.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and

transmission specifications contained in the Inpatient and Outpatient Coordinator Manual for Kentucky Hospitals.

(d) The cabinet shall grant a provider an extension of time to submit corrections, if the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(d) For the first data submission, the cabinet shall not count as errors any data for patients admitted prior to thirty (30) days of the effective date of this administrative regulation.

**Section 8. Data Corrections for Ambulatory Facilities.** (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by electronic transmission or postmarked mailing within the thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities.

(d) The cabinet shall grant a provider an extension of time to submit corrections, if the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall verify an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is more.

**Section 9. Fines for Noncompliance for Providers.** (1) A provider failing to meet quarterly submission guidelines as established in Sections 6, 7, and 8 of this administrative regulation shall be assessed a fine of \$500 per violation.

(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.

(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine which shall be made

payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.

(4) Fines during a calendar year shall not exceed \$1,500 per provider.

**Section 10. Extension or Waiver of Data Submission Timelines.** (1) Providers experiencing extenuating circumstances or hardships may request from the cabinet, in writing, a data submission extension or waiver.

(a) Providers shall request an extension or waiver from the Office of Health Policy on or before the last day of the data reporting period to receive an extension or waiver for that period.

(b) Extensions and waivers shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determining whether to grant an extension or waiver:

(a) Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

**Section 11. Appeals for Providers.** (1) A provider notified of its noncompliance and assessed a fine pursuant to Section 9(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, it shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) Appeals shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

**Section 12. Working Contacts for Providers.** (1) By January 1 of each calendar year, a provider shall report by letter to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name of the replacing person shall be reported immediately to the cabinet.

**Section 13. Required Data Elements for Hospitals.** (1) Hospitals shall ensure that each record submitted to the cabinet contains at least the following data elements as provided on the Standard Billing Form.

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Inpatient and Outpatient Coordinator Manual for Kentucky Hospitals.

(3) Additional data elements, as specified in the Inpatient and Outpatient Coordinator Manual for Kentucky Hospitals, shall be

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required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Provider Assigned Patient Control Number
Yes	*Provider Assigned Medical Record Number
Yes	*Type of Bill (inpatient, outpatient or other)
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Facility-specific NPI
Yes	*Statement Covers Period
Yes	*Patient City and Zip Code
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Admission/Start of Care Date
Yes	Admission Hour
Yes	*Type of Admission
Yes	*Source of Admission
Yes	*Patient Status (at end of service or discharge)
No	Occurrence Codes & Dates
No	Value Codes and Amounts, including birth weight in grams
Yes	*Revenue Codes/Groups
Yes	*HCPCS/Rates/Hipps Rate Codes
No	Units of Service
Yes	*Total Charges by Revenue Code Category
Yes	*Payor Identification - Payor Name
Yes	*National Provider Identifier
Yes	*Diagnosis Version Qualifier - ICD version 9.0 or 10.0
Yes	*Principal Diagnosis Code
No	Principal Diagnosis Code present on admission identifier for non-Medicare claims
Yes	*Principal Diagnosis Code present on admission identifier for Medicare claims
Yes	*Secondary and Other Diagnosis Codes if present
No	Secondary and Other Diagnosis code present on admission identifier if present for non-Medicare claims
Yes	*Secondary and Other Diagnosis code present on admission identifier if present for Medicare claims
No	Inpatient Admitting Diagnosis or Outpatient reason for visit
Yes	*External Cause of Injury Code (E-code) if present
No	External Cause of Injury (E-code) present on admission identifier on non-Medicare claims if present
Yes	*External Cause of Injury (E-code) present on admission identifier on Medicare claims if present
Yes	*Principal Procedure Code & Date if present
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*Attending Physician NPI/QUAL/ID
No	Operating Clinician ID Number/NPI
No	Other Physician NPI/QUAL/ID
Yes	*Race
Yes	*Ethnicity
Yes	*Procedure Coding Method

## Section 14. Required Data Elements for Ambulatory Facilities.

(1) Ambulatory Facilities shall ensure that each record submitted to the cabinet contains at least the following data elements as provided on the Standard Billing Form.

(2) Ambulatory Facilities shall identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities.

(3) Additional data elements, as specified in Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Zip Code
Yes	*1st Individual Payer ID#
Yes	*Admission/Start of Care Date
Yes	*Type of Bill
Yes	*Principal Diagnosis Code
Yes	*Secondary and Other Diagnosis Codes if present
Yes	*Principal Procedure Code & Date
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*1st Units of Service
Yes	*1st Charge
No	Secondary and Other Units of Service and Charge
Yes	*Total Charges for the Case
Yes	*Attending Clinician NPI
Yes	*Provider Assigned Patient ID#
Yes	*1st Insurer Group #
No	2nd Insurer Group #
Yes	*Operating Clinician NPI
Yes	*Billing Facility-specific NPI
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Statement Covers Period
Yes	*Primary Payor Name
No	Secondary Payor Name
Yes	*Race
Yes	*Ethnicity
Yes	*HCPCS/Rates/Hipps Rate Codes

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Inpatient and Outpatient Data Coordinator Manual for Kentucky Hospitals", updated 10/5/2009 [April 27, 2009]; and

(b) "Outpatient Data Coordinator Manual for Kentucky Ambulatory Facilities", updated 10/5/2009 [April 27, 2009].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

CARRIE BANAHAN, Executive Director

JANIE MILLER, Secretary

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD.** A public hearing on this administrative regulation shall, if requested, be held on December 21, 2009, at 9 a.m. in the Public Health Board Room located on the Second Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2009, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 4, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carne Banahan or Chandra Venettozzi, 564-9592

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation provides clarification and instruction to specified health care providers on the process necessary to submit to copies of administrative claims data to the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data to enable the cabinet to publish the data as required by KRS 216.2925.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed instructions to specified health care providers relating to the data elements, forms and timetables necessary to comply with statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation incorporates by reference updated data reporting manuals to reflect the most up-to-date Current Procedural Terminology (CPT) codes for which facilities must submit data. Also, at the request of free-standing ambulatory facilities, a new code for race and a new code for ethnicity were added for their use to indicate when a patient refuses to provide information related to race/ethnicity. At the request of KHA, a new code was added in the "payor ID#" field to indicate when the payor is "Blue Cross Blue Shield".

(b) The necessity of the amendment to this administrative regulation: CPT codes are updated by the American Medical Association annually. This amendment is necessary to reflect the most up-to-date CPT code lists. Additionally a new code for race and a new code for ethnicity were added for use by free-standing ambulatory facilities to indicate when a patient refuses to provide information related to race/ethnicity.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment continues to conform to the content of the authorizing statutes by providing a standardized method of reporting by facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes as it provides detailed instructions on how to submit required data elements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 175 hospitals and ambulatory facilities

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Each entity will collect and submit data as required. Entities are already required to submit data, so this regulation provides clarification and more specific instructions on the submission of that data.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each entity will modify their data reporting files to include only those records which include the specified CPT codes, which should be a minimal cost the entities

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will provide specific information on the data reporting requirements so that entities will have more detailed instructions. Additionally a new code for race and a new code for ethnicity were added for use by free-standing ambulatory

facilities to indicate when a patient refuses to provide information related to race/ethnicity, which they have requested.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs will be incurred to implement this administrative regulation as the office of Health Policy currently collects data and has the necessary data collection system in place.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. No new funding will be needed to implement the provisions of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish any fees directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services and the state operated hospital facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.2920-216.2929

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Aging and Independent Living**  
**Division of Operations and Support**  
**(Amendment)**

910 KAR 1:160. Program and certification requirements for the Adult Day and Alzheimer's Respite Program.

RELATES TO: KRS Chapter 13B, 194A.060(2), 194A.700(1),

(2), 205.010(6), (15), 205.201, 205.203, 205.204(1), 205.455(4), 205.460, 205.465, 205.950, 205.955, 209.030(2), (3), 216.787, 42 U.S.C. 3001, 3025

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(2), 205.950, 42 U.S.C. 3025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.950 requires the Cabinet for Health and Family Services to promulgate administrative regulations to establish health, safety, and treatment requirements for certified adult day-care centers, and to establish criteria for their certification. 42 U.S.C. 3025 requires grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050(1) requires the cabinet to adopt administrative regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the cabinet as the state agency to administer 42 U.S.C. 3001 in Kentucky. This administrative regulation establishes the adult day and Alzheimer's respite program.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Adult day-care center" is defined by KRS 205.010(15).

(3) "Adult day center respite" means respite provided in a group setting outside the home.

(4) "Adult day services" means a supportive and therapeutic social program of supervision and care:

(a) Provided to an eligible adult as defined in Section 2 of this administrative regulation;

(b) During a part of the day, but for less than twenty-four (24) hours; and

(c) For:

1. Assistance with self-administration of medication;
2. Personal care services;
3. Self-care training;
4. Social activities; and
5. Recreational opportunities.

(5) "Adult day health services" means a licensed program to provide continuous supervision of the client's medical and health needs.

(6) "Alzheimer's disease or related dementing diseases" means neurological diseases causing gradual and irreversible impairment of intellectual functioning of a sufficient severity to interfere with an individual's daily activities.

(7) "Alzheimer's respite" means a therapeutic social program of supervision and care provided to a client with Alzheimer's disease or related dementing disease in a client's home or in a center to enable the caregiver temporary relief from care giving duties.

(8) "Area plan" means the plan submitted by a district for the approval of the department that releases funds under contract for the delivery of services within the planning and service area.

(9) "Assessment" means the collection of information and evaluation about a person's situation and functioning which identifies needs and resources so that a comprehensive plan of care may be developed.

(10) "Assistance with self-administration of medication" is defined by KRS 194A.700(2).

(11) "Case management" means:

(a) A process for ensuring that participants receive appropriate, comprehensive, and timely services to meet their needs as identified in the assessment process;

(b) Planning;

(c) Referring the participant to appropriate agencies and individuals in the informal care giving systems;

(d) Monitoring; and

(e) Advocacy through case work activities in order to achieve the best possible resolution of individual needs.

(12) "District" is defined by KRS 205.455(4).

(13) "Identifiable space" means space set apart by visible barriers from other activities within the setting.

(14) "In-home respite" means respite provided in the client's home.

(15) "Licensed adult day health center" means a program licensed by the Kentucky Cabinet for Health and Family Services in accordance with 902 KAR 20:066.

(16) "Needy aged" is defined by KRS 205.010(6).

(17) "Nutrient dense snack" means a snack that contains a high proportion of nutrients in comparison to the number of calories.

(18) "Personal care services" means activities to help participants achieve and maintain good personal hygiene, including assistance with walking and activities of daily living.

(19) "Plan of care" means a written guide of action:

(a) Developed and agreed upon by the:

1. Client;
2. Primary caregiver, if applicable; and
3. Program case manager;

(b) Based upon the participant's needs, goals, and resources; and

(c) Including appropriate services to meet identified needs and achieve objectives.

(20) "Reassessment" means the formal reevaluation of the participant's situation and functioning and of the services delivered to identify changes that may have occurred since the last assessment.

(21) "Unit of service" means one-half (1/2) hour of direct service.

Section 2. Eligibility. To participate in the adult day and Alzheimer's respite program, an individual shall:

(1) Be able to respond and share in program activities without creating health and safety risks to self or others; and

(2)(a) Be:

1. Sixty (60) years of age or older;
2. Physically disabled or frail as a result of medical condition or age; and

(b) Be:

1. Sixty (60) years of age or older;
2. Mentally confused; and
3. In need of supervision to prevent injury, assure proper nutrition, and assist with self-administration of medication;

(c) Be:

1. Sixty (60) years of age or older; and
2. One who, because of emotional or social needs, may benefit from the individualized attention and social structure available through these services which are not otherwise available; or

(d) Be:

1. Any age; and
2. Have a diagnosis of probable Alzheimer's or related dementing disease, as confirmed by a written statement from a physician after a diagnostic evaluation.

Section 3. Assessment and Case Management. (1)(a) Each applicant for services shall be assessed for eligibility and need of services.

(b) For each eligible applicant, a plan of care shall be developed using the completed assessment, with participant involvement to the fullest extent of his or her abilities.

(2)(a) The case manager shall refer the client for other needed services identified by the assessment.

(b) One (1) service provider shall provide case management to a client receiving multiple services.

(3) The program director shall arrange for or conduct a formal reassessment at least every six (6) months.

Section 4. Fees and Contributions. (1) A case manager shall be responsible for determining fee paying status, using the following criteria:

(a) A fee shall not be assessed for the provision of assessment or case management services.

(b) The case manager shall:

1. Consider extraordinary out-of-pocket expenses to determine a client's ability to pay; and

2. Document in a case record a waiver or reduction of fee due to the extraordinary out-of-pocket expenses.

(c) A fee shall not be assessed to an eligible needy aged individual.

(d)1. SSI income or a food stamp allotment shall not be

deemed available to other family members.

2. The applicant receiving SSI benefits or a food stamp allotment shall be considered a family of one (1) for the purpose of fee determination.

(2)(a) An eligible person shall be charged a fee determined by the cost of the service unit multiplied by the applicable percentage rate shown in the chart in paragraph (c) of this subsection, based upon income and size of family using the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services.

(b) Service unit cost shall be determined by the state agency or contracting entity in accordance with its contract.

(c) The fee amount shall be calculated using a percentage rate based on the household's percentage of poverty, as follows:

Percentage of Poverty	1 Person	2 Person	3 Person or More
0-129%	0%	0%	0%
130%-149%	20%	0%	0%
150%-169%	40%	20%	0%
170%-189%	60%	40%	20%
190%-209%	80%	60%	40%
210%-229%	100%	80%	60%
230%-249%	100%	100%	80%
250% and above	100%	100%	100%

(3)(a) A contribution from an individual, family, or other entity shall be encouraged.

(b) Suggested contribution rates may be established; however, pressure shall not be placed upon the client to donate or contribute.

(c) Adult day services shall not be withheld from an otherwise eligible individual based upon the individual's failure to voluntarily contribute to support services.

(4) The district shall review and approve the procedure implemented by a service provider for the collecting, accounting, spending, and auditing of fees and donations.

(5)(a) The adult day care program funding formula, as required by 42, U.S.C. 3025(a)(2)(A)(i), shall consist of a \$30,000 base for each district, with the remaining amount of funds distributed in proportion to the district's elderly (sixty (60) plus) population in the state.

(b) The department may increase base funding as the need is determined contingent upon available funding.

**Section 5. Termination or Reduction of Services.** (1)(a) Only a case manager or client may decide to terminate adult day and Alzheimer's respite services.

(b) Adult day and Alzheimer's respite services may be reduced if:

1. The client's condition or support system improves; or  
2. A determination that the plan of care specified in Section 3(1) of this administrative regulation cannot be followed.

(2) If adult day and Alzheimer's respite services are terminated or reduced, the case manager shall:

(a) Inform the client of the right to file a request for a hearing in accordance with Section 12 of this administrative regulation;  
(b) Notify the client or caregiver of the action taken; and  
(c) Assist the client and family in making a referral to another agency, if applicable.

**Section 6. Service Provider Responsibilities.** (1) The service provider shall meet the following general requirements:

(a) Assure that program staff shall treat the client and caregiver in a respectful and dignified manner, involving them in decisions regarding the delivery of services;

(b) Assure that services are provided in a safe and consistent manner;

(c) Collect the fee for service as determined by the case manager based on the sliding fee scale in Section 4 of this administrative regulation;

(d) Use fees and donations to increase services;

(e) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;

(f) Develop and maintain written personnel policies and a wage

scale for each job classification;

(g) Designate a supervisor to assure that staff providing adult day services are provided supervision;

(h) Comply with applicable district administrative policies and procedures and service contracts;

(i) Provide access for staff of the district and cabinet for monitoring and evaluation purposes;

(j) Notify a case manager should the service needs of the client change due to a change in the client's:

1. Health;
2. Support services,
3. Family; or
4. Caregiver; and

(k) Develop for district approval policy and procedure:

1. For a client's referral for service to other appropriate programs and services currently provided in the district;

2. To reach a prospective client through community education and outreach activities;

3. For volunteer programs to be utilized;

4. For the periodic monitoring of a client for the appropriateness of adult day services and to assure safety and consistency;

5. For acceptance of a voluntary contribution and assurance the contribution shall be used to maintain or increase the level of service;

6. For the reporting of abuse, neglect, and exploitation consistent with KRS 209.030(2) and (3); and

7. For the manner in which delivery of adult day services shall be provided to an eligible individual.

(2) The service provider shall establish written policies and procedures to meet the following program requirements for adult day center respite services:

(a) Establish a schedule of days and hours of operation so that the program operates, at a minimum, four (4) hours per day, three (3) days per week, excluding holiday and emergency closings;

(b) Post the scheduled days and hours of operation in a conspicuous place and provide a written copy to the client and caregiver;

(c) Supervise program activities which shall be provided by staff or volunteer personnel meeting staff requirements as set forth in Section 9 of this administrative regulation;

(d) Provide a balance of planned individual and group activities to meet a client's needs, abilities, and interests as determined by the individual plan of care;

(e) Provide an inventory of each client's interests and personal history;

(f) Provide a client an opportunity to plan and evaluate activities on a monthly basis;

(g) Provide a client with a choice of activities and an opportunity to refuse to participate in the activity;

(h) Post a monthly calendar of planned activities and available services in a conspicuous place and retain it on site for a minimum of two (2) years for monitoring purposes;

(i) Provide assistance, if necessary, with activities of daily living, including:

1. Walking; and
2. Personal hygiene,
- (j) Provide assistance with self-administration of medications;
- (k) Provide a meal that complies with 910 KAR 1:190 if operating during normal meal time;

(l) Allow a client, as a supplementary activity to staff assignments, an opportunity to assist in planning menus;

(m) Offer a nutrient dense snack, water, and other liquids at regularly scheduled times during the day;

(n) 1. Post a monthly calendar of menus in a conspicuous place if meals are provided; and

2. Maintain menus for monitoring purposes for a minimum of two (2) years;

(o) Provide first aid and make appropriate arrangements for medical care with the client's physician or hospital for an accident or medical emergency;

(p) Notify the family or other appropriate person of any significant changes in the client's mental or physical condition,

(q) Refer a client to a health professional of the client's choice, as needed;

(r) Establish linkages with another community agency or institution to better coordinate services;

(s) Assist a client and the client's family in identifying and accessing a community agency for:

1. Financial;
2. Social;
3. Recreational;
4. Educational;
5. Medical; and
6. Other services;

(t) Assist the family in arranging transportation;

(u) Notify the district immediately of a negative incident or accident involving a client, staff member or volunteer;

(v) Have written complaint procedures that shall:

1. Include the address and phone number of the department;
2. Be posted in a conspicuous place, and
3. Be provided to each client; and

(w) Provide a written report to the district in response to a complaint if requested.

(3) An adult day health center shall:

(a) Be monitored and licensed by the Office of the Inspector General; and

(b) Comply with licensure requirements for adult day health services in accordance with 902 KAR 20:066.

(4) In-home respite care service providers shall:

(a) Establish with the client and caregiver a monthly schedule of days and hours of service based on the assessment, plan of care, and agreement with the client and caregiver;

(b) Provide a copy of the schedule to the caregiver; and

(c) Supervise the client and program activities as determined by the assessment and plan of care for adult day services.

Section 7. District Responsibilities. A district shall submit to the cabinet a proposal within its area plan to include at least the following:

(1) An assurance of access to records of the district pertaining to its contract for delivery of adult day services;

(2) A plan for the delivery of adult day services in the area to be served by the district including identification of services currently provided in the district;

(3) A provision for case management and assistance for adult day services;

(4) A policy and procedure for implementation of case management and assessment services;

(5) A policy and procedure for assuring a client's eligibility in accordance with Section 2 of this administrative regulation;

(6) Assurance of a number of proposed clients for adult day services to be provided that complies with the minimum requirements of KRS 205.010(15);

(7) A cost unit of service to be used as a basis for determining an applicable percentage for the fee schedule as established in Section 4 of this administrative regulation;

(8) A policy and procedure for monitoring a subcontract for delivery of direct adult day services;

(9) Approval of policies and procedures of the service provider required by Section 6(1)(k) of this administrative regulation; and

(10) A policy and procedure assuring that the assessment required by Section 3(1)(a) of this administrative regulation shall include the following information submitted electronically to the department in the formats prescribed by the Aging Services Tracking System:

- (a) Demographic information, including family income;
- (b) Physical health;
- (c) Activities of daily living and instrumental activities of daily living;
- (d) Physical environment;
- (e) Mental and emotional status;
- (f) Assistive devices, sensory impairment, and communication abilities;
- (g) Formal and informal resources; and
- (h) Summary and judgment.

Section 8. Facility Requirements. An adult day care and Alzheimer's respite program provider operating a facility for service

shall.

(1) Comply with requirements outlined in 902 KAR 20:066 for a licensed adult day health center, if offering adult day health services;

(2) Locate the adult day-care center in a geographic area that provides convenient access to a majority of older persons;

(3) Locate, design, and furnish the adult day-care center to be readily accessible to and usable by individuals with disabilities;

(4) Provide sufficient space and arrangements of furnishings to allow for:

- (a) Adequate client movement;
- (b) Program activities;
- (c) Food service; and
- (d) Socialization;

(5) Provide sufficient private office space to permit individual counseling and confidential maintenance of records;

(6) Provide appropriate lighting, heating, cooling and ventilation for client comfort and program activities;

(7) Provide covered leak-proof garbage disposal units for the kitchen;

(8) Equip each adult day-care center with bathroom facilities meeting the following requirements:

(a) A minimum of one (1) toilet and one (1) sink for each ten (10) clients;

(b) Readily accessible and usable by individuals with disabilities;

(c) In men's bathrooms urinals may be substituted for up to one-half (1/2) the number of toilets required; and

(d) Bathroom facilities that shall:

1. Be cleaned and sanitized daily or more often, if needed, which shall be documented by a cleaning log [located in the bathroom], and

2. Contain:

- a. Hot and cold running water;
- b. Mirror;
- c. Soap;
- d. Towels or electric hand dryers; and
- e. Leak-proof garbage disposal units that are emptied and cleaned daily;

(9) Comply with applicable local housing and health codes;

(10) Comply with zoning requirements;

(11) Obtain initial and annual inspection by state or local fire safety officials and comply with requirements;

(12) Maintain at least one (1) fully operational fire extinguisher with annually updated inspection tags;

(13) Maintain a fully equipped first aid kit, with unexpired contents, as recommended by the American Red Cross;

(14) Provide identifiable space during hours of operation, for a client in need of a more private environment or rest area; and

(15)(a) Provide separate identifiable space during operational hours, if co-located in a facility housing other services.

(b) The following space may be shared with other services:

1. Dining room;
2. Kitchen; and
3. Recreation area.

Section 9. Program Staff. (1) Staffing requirements for a certified adult day-care center shall include:

(a) Trained and experienced staff who shall be present each day of operation;

(b) At least two (2) staff members at the adult day-care center at times when there is more than one (1) client in attendance, one (1) of whom shall be a paid staff member;

(c) Staffing ratios that shall be:

1. One (1) staff member if one (1) client is in attendance;

2. Two (2) staff members if two (2) to ten (10) clients are in attendance;

3. Three (3) staff members if eleven (11) to fifteen (15) clients are in attendance; and

4. One (1) staff member for each five (5) additional clients over fifteen (15);

(d) [Except for a director,] Volunteer personnel that may be included in the staff ratio, if volunteer personnel meet the staff qualifications and training requirements of this administrative regu-



lation;

(e) A director who may be included as a volunteer in the staff ratio, if the director is solely providing coverage in the adult day-care and not covering a senior center or another program during the volunteer time

(f) At least one (1) staff member who has completed cardiopulmonary resuscitation certification by the American Heart Association or American Red Cross present when clients are in attendance; and

(g)(4) A criminal records check that shall be obtained on a potential employee or volunteer prior to the:

1. Employee's date of hire in accordance with KRS 216.787; or
2. Volunteer's start date

(2) Staff qualifications for programs shall be as follows:

(a)1. A director of an adult day-care center shall be:

a. A trained professional possessing:

(i) A minimum of a bachelor's degree in social work, nursing or a related field relevant to geriatrics and one (1) year professional experience in working with the elderly; or

(ii) A master's degree in social work or a related field relevant to geriatrics and six (6) months professional experience working directly with the elderly;

b. A registered or practical nurse licensed in Kentucky with three (3) years professional experience working directly with the elderly while an employee of a.

(i) Home health agency;

(ii) Long-term care facility;

(iii) Public health agency; or

(iv) Social service agency; or

c. An individual at least twenty-one (21) years of age with:

(i) A high school diploma or GED certificate; and

(ii) A minimum of two (2) years of college with at least three (3) years of professional experience in working directly with the elderly.

2. Professional experience that includes working directly with the elderly while an employee of a public or private health or social service agency may substitute for professional education to equal a minimum of five (5) years.

(b) A case manager for adult day services shall meet the same qualification requirements specified in paragraph (d) of this subsection.

(c) Administrators of licensed adult day health programs shall meet the requirements of 902 KAR 20:066.

(d) Staff responsible for assessments or case management for participants shall.

1. Have a bachelor's degree or master's degree in social work, gerontology, psychology, sociology, or a field relevant to geriatrics, no experience required;

2. Have a bachelor's or master's degree in nursing with a current Kentucky nursing license, no experience required;

3. Have a bachelor's degree in a field not relevant to geriatrics with two (2) years of paid or volunteer experience in working with the elderly;

4. Be a Kentucky registered nurse with a current Kentucky license and two (2) years of experience working with the elderly; or

5. Be a licensed practical nurse with a current Kentucky license and three (3) years of paid or volunteer experience working with the elderly.

(3) Upon employment, a tuberculosis screening shall be conducted according to current Center for Disease Control and Prevention standards and repeated annually thereafter.

(4) Staff or volunteer personnel who contract an infectious disease listed in 902 KAR 2:020 shall not appear at work until:

(a) The infectious disease can no longer be transmitted, and

(b) He or she provides a physician's statement authorizing a return to work.

(5) In-home respite staff shall meet the requirements of subsection (6) of this section and shall:

(a) Be twenty-one (21) years of age if working independently; or

(b) If working as a team to provide direct services, have one (1) member at least twenty-one (21) years of age and the other staff member at least eighteen (18) years of age.

(6) Training of staff shall be provided by a professional familiar

with the subject matter as follows:

(a) Prior to assuming duties, paid and volunteer personnel shall receive a minimum of six (6) hours of orientation to the program and adult day-care center, explained verbally and in writing, to include:

1. Program objectives;

2. Program policies and procedures;

3. Health, sanitation, emergency, and safety codes and procedures;

4. Client confidentiality; and

5. Personnel policies and procedures;

(b) Within one (1) month of employment all staff shall be trained and certified in cardiopulmonary resuscitation;

(c) Within three (3) months of employment, staff shall be provided a minimum of thirty-four (34) hours of basic training that includes:

1. The aging process;

2. Interpersonal communications;

3. Personal care services;

4. First aid;

5. Identifying and reporting health problems;

6. Stress management;

7. Recognizing and reporting suspected adult abuse, neglect, or exploitation consistent with KRS 209.030(2) and (3);

8. Universal blood and body fluid precautions;

9. Dementia, including:

a. Causes and manifestations of dementia; and

b. Managing a client with dementia;

10. Crisis intervention with a combative client; and

11. Effects of dementia on the caregiver.

(d) A minimum of eight (8) hours of annual training to review and update knowledge and skills shall be provided.

(e) If in-home respite care is provided in teams, at least one (1) member shall have orientation and basic training and the other member shall be provided:

1. Orientation prior to assuming duties; and

2. Basic training within three (3) months of employment.

Section 10. Client Records. (1)(a) A client record shall be typed or legibly written in ink with each entry dated and signed by the recorder and including the recorder's title.

(b) Each client record shall be maintained at the program site and contain:

1. A completed assessment;

2. Client notification by letter of eligibility, fees assessed, and the center's days and hours of operation;

3. A monthly summary of the client's:

a. Objectives and goals;

b. Progress;

c. Physical and mental conditions;

d. Behaviors;

e. Participation;

f. Appetite; or

g. Other changes or observations noted by program staff and case manager;

4. Emergency contact information including responsible party and personal physician;

5. Attendance record;

6. Record of services provided by in-home or other program services;

7. Signed authorization for client to receive emergency medical care, if necessary;

8. Ongoing reassessment and plan of care;

9. Signed and dated medical summary and care plan, if referred on orders of a physician;

10. Correspondence; and

11. Closing summary.

(2) Licensed day care centers shall maintain records as required by 902 KAR 20:066.

(3) The service provider shall comply with reporting requirements of the district and the cabinet.

(4) Confidentiality of records and reports shall be in accordance with KRS 194A.060(2).

Section 11. Certification of Adult Day-Care Centers. (1) An adult day-care center shall be certified by the cabinet.

(2) An authorized representative of the department shall have the authority to inspect premises and records required by this administrative regulation and may request assistance from the local health department upon receipt of a complaint.

(3) Application for certification shall be made by filing a DAIL-ADC-900[.] Application for Adult Day-Care Center Certification, with the Cabinet for Health and Family Services, Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(4)(a) Renewal of certification shall be made biennially.

(b) A renewal application shall be submitted sixty (60) days prior to the expiration date of the current certification.

(5)(a) Compliance with the health, safety, and treatment standards established in this administrative regulation shall be documented on a DAIL-ADC-901[.] Adult Day-Care Center Certification Check List.

(b) Documented compliance shall be confirmed by [an] unannounced inspection pursuant to KRS 205.955 conducted by the department.

(6)(a) Regulatory violations identified during [an] inspection shall be transmitted in writing to the adult day-care center;

1. Within fifteen (15) business days of the inspection;

2. With a DIAL-ADC-902 Statement of Noncompliance and Plan of Correction.

(b) The adult day-care center shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within fifteen (15) business days of receiving the department's DIAL-ADC-902 Statement of Noncompliance and Plan of Correction[statement of noncompliance].

1. The plan shall specify the dates by which each of the violations shall be corrected.

2. The department shall review the plan and within fifteen (15) days of receipt of the plan for compliance:

a. Notify the adult day-care center whether the plan is acceptable or not, in writing;

b. If acceptable, issue a certificate certifying the adult day-care center for a two (2) year period; and

c. If unacceptable, specify the reasons.

3. If the department notifies the adult day-care center that the plan is unacceptable, the center shall amend the plan for compliance and resubmit it within fifteen (15) business days.

(7) If the department determines after reviewing the amended plan of compliance that certification shall be denied, the department shall, within ten (10) business days of the determination:

(a) Notify the adult day-care center of the determination;

(b) Notify the adult day-care center of the opportunity for an informal dispute resolution meeting between the department and a representative of the adult day-care center to be held within fifteen (15) days of the adult day-care center's receipt of the notice;

(c) Provide the center with any supporting documentation or materials regarding an issue of noncompliance; and

(d) Notify the adult day-care center of its appeal rights in accordance with Section 12 of this administrative regulation.

Section 12. Appeal Procedures. (1) If certification of an adult day-care center has been denied or revoked, the applicant shall be notified in writing of the right to appeal. The department shall send the notice by certified mail within ten (10) days of the determination.

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days, pursuant to KRS 205.950, after receipt of the notice.

(3) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.120[+3B].

(4)(a) If the denial or revocation is upheld by the secretary, the commissioner of the department or representative shall specify the date by which the adult day-care center shall close.

(b) The center shall be notified in writing in accordance with KRS 13B.120(5).

(5) An adult day-care center may appeal a final decision to the circuit court within thirty (30) days after the final order is mailed or

delivered, in accordance with KRS 13B.140(1).

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-ADC-900[.] Application for Adult Day-Care Center Certification", edition 2/10[7/08]; and

(b) "DAIL-ADC-901[.] Adult Day-Care Center Certification Checklist", edition 2/10; and

(c) "DIAL-ADC-902 Statement of Noncompliance and Plan of Correction", edition 2/10[7/08].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DEBORAH S. ANDERSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: November 10, 2009

FILED WITH LRC: November 10, 2009 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge, 564-6930, extension 3432

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes the adult day and Alzheimer's respite program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish health, safety, and treatment requirements and to certify adult daycare centers in accordance with KRS 205.950.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes health, safety, and treatment standards for a certified adult day-care center.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the standards of operation for a certified adult day-care center.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the role of an adult day-care director acting as a volunteer, clarifies that volunteer personnel shall have a criminal record check before their start date with an adult day-care center, makes technical changes, and updates forms incorporated by reference in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish the requirements for a director if the director is serving as a volunteer of the adult day-care center, establish a safer environment for the client by performing criminal records checks, to comply with KRS

13A.2255 for updates to forms, and comply with KRS 13A.222 with making technical changes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 205.950 which requires health, safety, and treatment requirements for certification of adult day-care centers. The updated form is for the department's use in completing a statement of noncompliance if violations are found during a certification review.

(d) How the amendment will assist in the effective administration of the statutes: The same as for (c).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 22 adult day-care centers in Kentucky - 1,008 clients being served, and fifteen (15) districts that contract with the Department for Aging and Independent Living to carry out services for the adult day-care and Alzheimer's respite program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The adult day care director can be counted in the staff ratio as volunteer personnel if the director is solely providing coverage in the adult day-care and not covering a senior center or another program during the volunteer time. The adult day-care center will obtain a criminal records check on a volunteer prior to the volunteer's start date. The new form incorporated by reference requires the adult day care center to complete a plan of correction if violations are found during a certification review.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a \$10 charge per volunteer personnel to obtain criminal records checks through the Administrative Office of the Courts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The adult day-care centers will benefit by being in compliance with the certification requirements of this administrative regulation in accordance with KRS 205.950(1).

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and federal Title III AOA funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fees of this administrative regulation are copayments for services if a client is eligible to pay in accordance with KRS 205.203(2).

(9) TIERING: Is tiering applied? Implementation of policy is the same statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 3025

2. State compliance standards. KRS 194A.050(1), 205.204(2), 205.950.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Aging and Independent Living and fifteen (15) Area Agencies on Aging will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) and 205.950(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no revenue generated for the state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

Office of Human Resource Management

Division of Employee Management

(Amendment)

#### 920 KAR 1:070. Deaf and hard of hearing services.

RELATES TO. KRS 2.110, 163.500, 163.506, 194A.005(1), 194A.030(10), 194A.060, 278.548, 309.300-309.319, [42-290,] 28 C.F.R. 35.160, 29 U.S.C. 794, 42 U.S.C. 12131-12213, 45 C.F.R. 160, 162, 164, P.L. 104-191, 110-325, E.O. 2009-541 [42101-et seq.]

STATUTORY AUTHORITY: KRS 12.290, 194A.050(1), 344.500(1) [494.050]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for proper administration of the cabinet and its programs. In accordance with federal mandates in 28 C.F.R. 35.160, 29 U.S.C. 794, 42 U.S.C. 12131-12213, as amended by P.L. 110-325 [42101-et seq.], and KRS 12.290, and 344.500(1) the Cabinet for Health and Family Services has a responsibility to provide accessibility to program services delivered directly by the cabinet or indirectly through a contractual or other arrangement to an individual who is [directly administered or through contract to persons who are] deaf or hard of hearing. This administrative regulation establishes cabinet procedures for the provision of interpreting services to a client who is deaf or hard of hearing [sets forth cabinet procedures].

Section 1. Definitions. (1) "Assignment" means interpreting for a client as approved by a cabinet program.

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Cabinet program" means a program of service, financial aid, or other benefit administered by the cabinet and provided:

- (a) Directly by the cabinet; or
- (b) Indirectly by the cabinet through a contractual or other arrangement.

(4) "Client" means a person who:

- (a) Applies in writing, electronically, verbally, or through a designated representative for participation in a cabinet program; or
- (b) Receives a service, financial aid, or other benefit from a cabinet program.

(5) "Deaf" and "hard of hearing" are defined by KRS 163.500.

(6) "Emergency" means a situation of an urgent nature in which a client determines that a delay of the event for more than twenty-four (24) hours is likely to result in loss of service, financial aid, or other benefit in a cabinet program.

(7) "Interpreter" is defined by KRS 309.300(4).

(8) "Interpreting" is defined by KRS 309.300(5).

(9) "Kentucky Board of Interpreters for the Deaf and Hard of Hearing" means:

(a) "Board" defined by KRS 309.300(1); and

(b) The board established by KRS 309.302.

(10) "Kentucky Commission on the Deaf and Hard of Hearing" or "KCDHH" means the commission established by KRS 163.506.

(11) "Office of Human Resource Management" or "OHRM" means the major organizational unit of the cabinet established by KRS 194A.030(10) and EO 2009-541.

(12) "Ongoing interpreting services" means interpreting services required to meet the needs of a client in a cabinet program in accordance with the client's plan of care, case plan, or program eligibility.

(13) "Time-limited interpreting services" means interpreting services which are provided to a client at a specific time and location in order to access a cabinet program.

**Section 2. Provision of Interpreting Services.** (1) A cabinet program shall make available interpreting services to a client who is deaf or hard of hearing.

(2) Interpreting services provided by a cabinet program shall be at no charge to a client.

(3) Interpreting provided by a cabinet program shall be in accordance with KRS 309.301.

(4) On behalf of a client who is deaf or hard of hearing and does not waive interpreting services in accordance with Section 4(2) of this administrative regulation, a cabinet program shall:

(a) Access an interpreter licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; or

(b) Request interpreting services:

1. In accordance with 735 KAR 2.050; and

2. Through the Interpreter Referral Service Program established by KCDHH in 735 KAR Chapter 2.

(5) A cabinet program may utilize an employee for interpreting as an alternative to the requirement of subsection (4) of this section if:

(a) The cabinet program employs an individual who is licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; and

(b) No actual or perceived conflict exists between the employee's job duties and the provision of interpreting services for a client, as approved by the employee's supervisor.

(6) A cabinet program or a client may access the Kentucky Telephone or Video Relay Service Program established in accordance with KRS 278.548.

**Section 3. Interpreter Selection.** (1) In the selection of an interpreter, a cabinet program shall give consideration to:

(a) An interpreter's:

1. Licensure;

2. Certification;

3. Years of experience; and

4. Exposure to the cabinet program or familiarity with the jargon of the cabinet program;

(b) Prior use of the interpreter by the cabinet program for the

same client;

(c) Any preference of the client; and

(d) The estimated cost for the interpreting services.

(2) An interpreter who provides interpreting services to a cabinet program shall:

(a) Comply with:

1. 735 KAR 2.040 if the interpreter is retained through KCDHH Interpreter Referral Services Program; and

2. Licensure requirements of the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; and

(b) Agree to confidentiality in the provision of interpreting services in accordance with KRS 194A.060, 45 C.F.R. 160, 162, 164, and Pub L. 104-191.

**Section 4. Client Rights.** (1) A cabinet program shall inform a client who is deaf or hard of hearing of the client's right to effective communication through the provision of the CHFS-OHRM-EEO-2, Your Right to Effective Communication.

(2)(a) A client who is deaf or hard of hearing shall have the right to waive interpreting services provided by a cabinet program.

(b) To waive interpreting services:

1. A client shall complete and sign the CHFS-OHRM-EEO-3, Waiver of Interpreting Services; and

2. The cabinet program shall provide a copy of the signed CHFS-OHRM-EEO-3 to the client.

(c) A client may rescind the CHFS-OHRM-EEO-3 at any time.

(3) If a client refuses a specific interpreter, a cabinet program shall attempt to find a replacement but shall not guarantee a replacement.

**Section 5. Payment for Interpreting Services.** (1)(a) Unless an emergency exists, a cabinet program shall approve payment for interpreting services, whether time-limited or ongoing interpreting services, with an interpreter prior to the provision of interpreting services to a client.

(b) The total payment approved shall:

1. Be documented in writing;

2. Be copied or shared with the interpreter and the cabinet program;

3. Include identifying information about the cabinet program and the assignment; and

4. Include a breakdown of the interpreter's:

a. Hourly rate in accordance with subsection (3) of this section;

b. Projected number of hours for the assignment in accordance with subsection (4) of this section;

c. Projected mileage;

d. Meal required during the assignment; and

e. Overnight lodging requested for the assignment in accordance with paragraph (c) of this subsection.

(c) An overnight lodging request for interpreting services shall include:

1. A justification for the overnight lodging;

2. The estimated length of the lodging;

3. A preferred lodging establishment; and

4. Projected lodging costs.

(2) Mileage and meal reimbursement shall be in accordance with 200 KAR 2.006.

(3)(a) A cabinet program shall pay an interpreter an hourly rate:

1. For interpreting services provided Monday through Friday between the hours of 8 a.m. and 5 p.m.; and

2. Consistent with the prevailing rate for the service area.

(b) In addition to the hourly rate established in paragraph (a) of this subsection, a cabinet program shall pay an enhanced hourly rate consistent with the prevailing enhanced rate for the service area if the interpreter's assignment falls:

1. Between 5 p.m. and 8 a.m. Monday through Friday;

2. Between 5 p.m. Friday and 8 a.m. Monday; or

3. On a state holiday established in accordance with KRS 2.110.

(c) The cabinet shall consult annually with KCDHH regarding accessibility and the provision of accommodations.

(4)(a) With the exception of mileage, a meal, and lodging, the

hourly rate established in accordance with subsection (3) of this section, shall include:

1. Time on the assignment; and
  2. Reasonable time traveling for the assignment.
- (b) A cabinet program shall determine an interpreter's time traveling as reasonable based on:
1. Mileage; and
  2. Road and driving conditions on the date of the interpreter's assignment.
- (5) If an interpreter's assignment in a cabinet program is less than two (2) hours, the cabinet program shall pay:
- (a) Two (2) hours for the assignment; or
  - (b) Less than two (2) hours in accordance with the invoice submitted for the assignment.
- (6)(a) A cabinet program shall pay an interpreter for the assignment in accordance with the payment approved pursuant to subsection (1) of this section if:
1. A client does not appear for an appointment or cancels an appointment with less than twenty-four (24) hours notice; or
  2. The cabinet fails to notify the interpreter of the cancellation twenty-four (24) hours or more in advance of the appointment.
- (b) The cabinet shall re-schedule an appointment if:
1. A request to re-schedule is received two (2) business days in advance of the appointment; or
  - 2 a. The cabinet determines that staff of the cabinet program, the interpreter, or the client is not at fault for failure to keep the appointment; and
  - b. The client requests re-scheduling of the appointment.
- (7)(a) An interpreter shall:
1. Document actual costs of interpreting services to a cabinet program; and
  2. Submit an invoice to the cabinet program for verification and payment.
- (b) For each assignment, an interpreter's invoice shall contain the following:
1. The purpose of the assignment, including the client's name or an identifier for the client's case;
  2. For each date of the assignment, the:
    - a. Hours of the day during which the interpreting services were provided;
    - b. Total number of hours of the interpreting services;
    - c. Hourly rate for the interpreting services;
    - d. Mileage for the assignment; and
    - e. Rate per mile in accordance with subsection (2) of this section;
  3. The total cost for any lodging;
  4. A grand total for all costs;
  5. Contact information for an employee with the cabinet program to verify:
    - a. The provision of interpreting services; and
    - b. Costs approved in accordance with subsection (1) of this section;
  6. The interpreter's:
    - a. Name;
    - b. Social Security number or federal identification number;
    - c. Contact number;
    - d. E-mail address, if one is available; and
    - e. Mailing address;
  7. The date of the invoice; and
  8. A number for the invoice.
- (c) If an interpreter submits an invoice to a cabinet program that includes lodging, the interpreter shall attach the original receipt from the lodging establishment.
- (8)(a) Payment for interpreting services shall be available to an interpreter who is not:
1. A volunteer; or
  2. An employee of a cabinet program.
- (b) An employee of a cabinet program, who is utilized in accordance with Section 2(5) of this administrative regulation, shall not receive payment for interpreting services in addition to the employee's:
1. Pay and employee benefits from the cabinet program; and
  2. Reimbursement for travel in accordance with 200 KAR 2:006.

Section 6. Complaints. If an individual is aggrieved by a cabinet program's provision of, or failure to provide, interpreting services in accordance with this administrative regulation, the individual may submit a:

- (1) Grievance to the KCDHH in accordance with 735 KAR 2:060; or
- (2) Client Civil Rights complaint. If discriminatory action by a cabinet program is alleged, to the:
  - (a) Office of Human Resource Management in accordance with 920 KAR 1:090;
  - (b) U.S. Department of Health and Human Services' Office for Civil Rights;
  - (c) U.S. Department of Agriculture's Office of Assistant Secretary for Civil Rights or Food Nutrition Service Southeast Regional Office;
  - (d) U.S. Department of Education's Office of Civil Rights;
  - (e) U.S. Department of Labor's Civil Rights Center;
  - (f) U.S. Department of Justice's Civil Rights Division;
  - (g) Kentucky Commission on Human Rights; or
  - (h) Another federal, state, or local agency with jurisdiction over the cabinet program involved in the alleged discrimination.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "CHFS-OHRM-EEO-2, Your Right to Effective Communication", edition 2010; and
  - (b) "CHFS-OHRM-EEO-3, Waiver of Interpreting Services", edition 2010.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. ("Cabinet" means the Cabinet for Health and Family Services.

(2) "Emergency provisions" means the cabinet offices and agency facilities shall maintain an updated listing of qualified interpreters who are available on a twenty-four (24) hour basis to provide services for individuals in need of immediate mental health or social services. The Department for Mental Health and Mental Retardation Services and the Department for Community-Based Services and their contract agents shall first attempt to obtain a nationally certified interpreter when providing counseling and therapeutic services.

(3) "Individual" means a person who is deaf or hard of hearing.

(4) "Interpreter services" means services provided by a qualified interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary satisfactory and suitable to the interpreting situation. If the individual seeking services, cabinet staff or contract agency of the cabinet questions the qualifications of the individual designated to provide interpreter services, qualifications may be demonstrated as follows:

- (a) By possession of a national interpreter certification; or
- (b) Verification of equivalent qualifications obtained in other states; or
- (c) By documentation demonstrating passage of a state screening test administered by the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) and determined by the cabinet or its contract agents to be of a qualification level which meets the needs of the individual seeking program services.

(5) "Ongoing interpreter services" means interpreter services required to meet the needs of residents, patients, or outpatients in accordance with the patient's or resident's plan of care. Interpreter services are provided to individuals residing in or receiving services from cabinet facilities or contract agents of the cabinet.

(6) "Portal to portal" means time spent by an interpreter working on an authorized assignment whose pay is based on moment of departure from home or office until time of return.

(a) "Hourly rates" include travel, time, meals and other related expenses with the exception of mileage and lodging.

(b) "Lodging" shall have prior approval and shall not exceed fifty (50) dollars per night excluding taxes.

(c) "Mileage" shall be paid at the state rate in accordance with 200 KAR 2:006.

(d) "Travel time" shall be determined reasonable by the cabinet

or its contract agent based on mileage and road and driving conditions on the date of service.

(7) "Time limited" means interpreter services which are provided to an individual at a specific time and location in order to access program services directly administered by the cabinet.

(8) "Timely request" for interpreter services to access program services means verbal requests which includes requests made by TDD or written requests are deemed to be timely if they are received at the location designated to provide the service at least seventy-two (72) hours, excluding weekends and holidays, prior to the date of service.

(9) "TDD" means telecommunications device for the deaf for individuals who are deaf or hard of hearing.

**Section 2. Provision of Interpreter Services.** (1) Any deaf or hard of hearing person requesting program services directly administered by the cabinet shall have interpreter services made available through the cabinet agency upon the timely request of the individual.

(a) If interpreter services cannot be made available to the individual within the time specified in Section 1(8) of this administrative regulation, the cabinet agency shall arrange for services as soon as an interpreter is available for scheduling by the agency or facility.

(b) The reason for delay in securing interpreter services in excess of seventy-two (72) hours shall be documented.

(2) When available and appropriate, the cabinet agency or facility securing interpreter services shall use on-site personnel qualified to provide interpreter services in accordance with Section 1(4) of this administrative regulation.

(3) If no interpreter is available on-site to provide interpreter services, supervisory personnel shall request assistance from the KCDHH which may assist in obtaining an available community resource to provide interpreter services.

(4) The Department for Mental Health and Mental Retardation Services and the Department for Community-Based Services and their contract agents shall have emergency provisions as specified in Section 1(2) of this administrative regulation for individuals who are patients or facility residents.

(5) Any interpreter who provides interpreter services shall comply with federal and state requirements which govern the confidentiality of information and records relating to services provided by the cabinet or its contract agents. The person providing interpreter services shall sign an OPB-002.

(6) The individual seeking program services shall be informed, in writing, of his rights to effective communication provided at no expense to the individual. The provision of rights is incorporated in the form OPB-001-A which shall be provided to the individual seeking program services.

(7) The individual seeking program services shall have the right to waive the provision of an interpreter to be provided through the cabinet or contract agent. If the provision is waived, the individual shall complete and sign an OPB-001-B. The waiver may be rescinded at any time by the individual. A copy of the signed Waiver of Interpreter Services, OPB-001-B, is provided to the individual.

(8) If the individual seeking program services believes the interpreter provided by the cabinet does not have sufficient qualifications as defined in Section 1(4) of this administrative regulation, the individual may request interpreter services of a higher skill level.

**Section 3. Payment for Qualified Interpreter Services.** (1) Whenever possible, interpreter services involving no additional cost to the cabinet shall be used for time limited and ongoing services.

(2) Payment for nonvolunteer or qualified nonagency staff shall be compensated as follows:

(a) At a rate of no less than eight (\$8) dollars per hour and up to twenty-two (\$22) dollars per hour for time limited interpreter services. This rate includes time spent in travel, interpreting and meal time. Meal time shall not exceed one (1) hour.

(b) Interpreters shall be paid for at least two (2) hours of service which can include waiting time due to delays in appointments and when an individual does not appear for the appointment.

(c) Payment for hours other than between 8 a.m. – 4:30 p.m.

Monday through Friday will be paid at time and a half.

(3) If ongoing interpreter services as defined in Section 1(5) of this administrative regulation are required, the cabinet or contract agency shall purchase interpreter services at a cost effective negotiated rate.

(4) The cabinet, at least annually, shall consult with the KCDHH regarding its recommendations of qualification standards and payment rates for interpreter services.

**Section 4. Complaints.** (1) Any deaf or hard of hearing person who believes he was denied access to program services provided directly or through contractual arrangement with the cabinet may file a complaint with the cabinet's Ombudsman Office in writing or through a TDD as follows:

(a) A toll free 800 TDD telephone number is available to access the cabinet Ombudsman Office.

(b) The mailing address for the cabinet's ombudsman is the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

(c) The Kentucky Relay Service allows hearing persons without a TDD to call a person who is deaf or hard of hearing. This service also permits a deaf or hard of hearing person to call a hearing person. Voice to TDD is available in Kentucky, toll free, through an 800 telephone number. TDD to voice is available in Kentucky, toll free, through an 800 telephone number.

(2) Complaints shall be handled in accordance with 900 KAR 1.030.

**Section 5. Incorporation by Reference.** (1) The OPB-001-A, Your Rights to Effective Communication, dated June 1, 1994, the OPB-001-B, Waiver of Interpreter Services, dated June 1, 1994, and the OPB-002, Interpreter Confidentiality Assurance Form, dated May 1, 1994, shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected or copied at the Office of Program Support, Cabinet for Health and Family Services, 4th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are from 8 a.m. to 4:30 p.m.]

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Income Support  
Child Support Enforcement  
(Amendment)**

**921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.**

RELATES TO: KRS 205.710-205.800, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, [303.31.] 42 U.S.C. 651-669B

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.795 and 405.520 authorize the secretary of the cabinet to promulgate and adopt administrative regulations to operate the Child Support Enforcement Program in accordance with federal law and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

**Section 1. Support Obligation Shall be Established.** (1) A child support and medical support obligation shall be established by:

- (a) A court of competent jurisdiction; or
- (b) An administrative order.

(2) The obligation shall be the amount as established administratively or judicially, as computed by the:

- (a) CS-71, Commonwealth of Kentucky Worksheet for Monthly



Child Support Obligation; or [Specified in Section 2(4) of this administrative regulation; or]

(b) CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception [Administratively established by the cabinet in accordance with the child support guidelines contained in KRS 403.212, as computed on form:

1. CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation; or

2. CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception;

(3) The amount determined shall be the amount to be collected. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statute and legal process in establishing the amount of a child support and medical support obligation, including KRS 403.211, 403.212, 405.430 and 454.220.

(5) In addition to the deductions specified in KRS 403.212(2), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as specified in KRS 403.212(2)(g)3, shall be calculated by using:

(a) That parent's portion of the total support obligation as indicated on the worksheet, if:

1. There is a support order; and
2. A copy of the child support obligation worksheet is obtained;

or

(b) 100% of the income of the parent with whom the prior born child resides, if:

1. There is no support order;
2. There is a support order, but no support obligation worksheet; or
3. A worksheet cannot be obtained.

(6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:

- (a) Complete service of process; or
  - (b) Document an unsuccessful attempt to serve process.
- (7) If service of process has been completed, the cabinet shall, if necessary:

- (a) Establish paternity;
- (b) Establish a child support or medical support obligation; or
- (c) Send a copy of any legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.

(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:

- (a) Paternity is not in question;
- (b) There is no existing order of support for the child;
- (c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and
- (d) The noncustodial parent's, or obligor's, address is known.

(2) ~~The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212, or subsection (4) of this section.~~

(3) To gather necessary information for administrative establishment, as appropriate the cabinet shall:

(a) Send to the custodial parent or nonparent custodian [;] forms:

1. CS-133, Custodial Parent Information Request;
2. ~~CS-65, Statement of Income and Resources;~~
3. ~~CS-132, Child Care Expense Verification; and~~
- 3.4. ~~CS-136, Health Insurance Information Request;~~
- (b) ~~Send to the custodial parent the CS-65, Statement of Income and Resources.~~ [Send to the nonparental custodian, or obligor, forms:

1. CS-131, Nonparental Custodian Information Request;
  2. CS-132; and
  3. CS-136, if appropriate;]
- (c) Send to the noncustodial parent [; or obligor,] forms:

1. CS-64, Noncustodial Parent Appointment Letter;
2. CS-65, Statement of Income and Resources;
3. CS-132, Child Care Expense Verification; and
4. CS-136, Health Insurance Information Request;

(d) Send a CS-130, Income [Wage] Information Request, to the employer of the:

1. Custodial parent; or
2. Noncustodial parent, or obligor;
- (e) Issue a CS-84 Administrative subpoena [; if appropriate:
- 4.] In accordance with KRS 205.712(2)(k) and (n), if appropriate:

ate:

- [2- On a custodial parent;
- 3- On a nonparental custodian;
- 4- On a noncustodial parent, or obligor, or
- 5- An employer, and]

(f) Prior to initiating a request for information from a certified consumer credit reporting agency, send an obligor a CS-93, Advance Notice of Intent to Request Full Credit Report in accordance with KRS 205.7685.

(3) The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212 or subsection (4) of this section.

(4) In a default case, the cabinet shall set the obligation based upon the needs of the child or the previous standard of living of the child, whichever is greater in accordance with KRS 403.211(5) [on the Kentucky Transitional Assistance Program (K-TAP) standard of need for a child as specified in 921 KAR 2:016, Section 9.]

(5) After the monthly support obligation is determined, the cabinet shall:

(a) serve a CS-66, Administrative Order/Notice of Monthly Support Obligation, [and a CS-80, Rights and Responsibilities of Noncustodial Parents, upon the noncustodial parent, or obligor,] in accordance with the requirements of KRS 405.440 and 42 U.S.C. 654(12);]

(b) Provide the legal representative of the noncustodial parent, or obligor, with a copy of the notice within fourteen (14) calendar days of the noncustodial parent's, or obligor's, refusal or acceptance of the notice, and

(c) Send a CS-66 to the custodial parent, concurrent with issuing the CS-66 to the noncustodial parent or obligor.]

(6) [In accordance with KRS 405.430(6), the cabinet may modify the monthly support obligation established by the cabinet.

(7) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (7)(b) of this section.

(7)(b) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:

- (a) Administratively upon notice to the obligor or obligee; or
- (b) Judicially through a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) In accordance with KRS 405.430(6), the cabinet may modify the monthly support established. Every thirty-six (36) months the cabinet shall notify each party subject to a child support order of the right to request a review of the order [every thirty-six (36) months].

(2) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review upon the request of:

- (a) Either parent;
- (b) The state agency with assignment; or
- (c) Another party with standing to request a modification.

(2) In accordance with 45 C.F.R. 303.8(e), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

- (a) Conduct the review;
- (b) [1-] Modify the order;
- (c) [2- Request modification of the order; or
- 3-] Determine the circumstances do not meet criteria for modification; and

(4) The cabinet shall, in accordance with KRS 403.213, and issue a CS-79, Notification of Review Determination, as specified in paragraph (c) of this subsection; and

(e) provide notification within fourteen (14) calendar days of



modification or determination to each parent or custodian, if appropriate, and legal representatives by issuing a CS-79, Notification of Review Determination, in accordance with KRS 403.213 (3). Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review and, in accordance with subsection (4) of this section, modify a child support order:

- (a) Upon the request of:
  - 1. Either parent; or
  - 2. Another party with standing to request a modification; and
- (b) Every thirty-six (36) months in a K-TAP case in which the address of each parent or custodian is known;
- (4) If a child support case meets the criteria of KRS 403.213, the cabinet shall:
  - (a) Modify an administratively established order; or
  - (b) Request a court of competent jurisdiction to modify a judicially established order.
- (5) In accordance with subsections (2) and (3)(a) and (4) of this section, the cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child as defined in KRS 403.211(7)(a) through (d).
- (6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "CS-64, Noncustodial Parent Appointment Letter", edition 3/10(3/09);
- (b) "CS-65, Statement of Income and Resources", edition 3/10(3/09);
- (c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", edition 3/10(3/09);
- (d) "CS-71, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", edition 3/10(3/09);
- (e) "CS-71.1, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", edition 3/10(3/09);
- (f) "CS-79, Notification of Review Determination", edition 3/10(3/09);
- (g) ["CS-80, Rights and Responsibilities of Noncustodial Parents", edition 3/09;
- (h) "CS-84, Administrative Subpoena", edition 3/09;
- (h)(+) "CS-93, Advance Notice of Intent to Request Full Credit Report", edition 3/10(3/09);
- (i)(+) "CS-130, [Income]Wage] Information Request", edition 3/10(3/09);
- (j)(k) "CS-131, Nonparental Custodian Information Request", edition 3/09;
- (4) "CS-132, Child Care Expense Verification", edition 3/10(3/09);
- (k)(m) "CS-133, Custodial Parent Information Request", edition 3/10(3/09); and
- (l)(+) "CS-136, Health Insurance Information Request", edition 3/10(3/09).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENO, Deputy Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: November 9, 2009

FILED WITH LRC: November 10, 2009 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2009 at 9 a.m. in the Public Health Board Room, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2009, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do

not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 4, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mary Sparrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement requirements for the establishment, review, and modification of child support and medical support orders in accordance with 42 U.S.C. 651 - 654, 656, 666, 667, 669B and 45 C.F.R. 302 and 303.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050(1), 205.795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 651-669B to establish, review, and modify child support and medical support obligations. This administrative regulation sets forth such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with further establishing procedures to ensure effective administration of and conforming to KRS 403.211 through 403.213.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will provide identification of authorizing state and federal laws in both the administrative regulation and the incorporated forms. This amendment outlines the procedures necessary to conform to KRS 403.211 through 403.213. Also, with changes to the incorporated forms, notice is being given to the parties involved of their right to contest and request an administrative hearing.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to duplicate federal language within the incorporated forms and to carry out the mandates for child support and medical support orders contained in HB 489 of the 2009 GA.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the cabinet in establishing, reviewing, and modifying child support and medical support orders. This amendment identifies each party that has a right to request a review or modification of the child or medical support order, conforming to 45 C.F.R. 303.8. This amendment also identifies KRS 403.212 and 403.211(5) as the laws governing how child support obligations are determined.

(d) How the amendment will assist in the effective administration of the statutes: The incorporated forms have been modified to be more simple and user friendly and where action by the custodial parent or noncustodial parent is required, a notice of rights to contest and request an administrative hearing have been added.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The updates to the state forms incorporated by reference in this regulation will affect the Child Support Enforcement Program and Contracting Officials' offices, Custodial Parents, Noncustodial Parents and their children. As of 9/30/09, CSE currently has 309,111 active child support cases.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: According to HB 489, if private health insurance is reasonable in cost and accessible to either parent at the time the request for coverage is made, either parent shall have to obtain or maintain coverage and the cost shall be allocated between the parents in proportion to their combined monthly adjusted parent gross income. If private health insurance is not reasonable in cost and accessible, cash medical support shall be paid until private health insurance coverage becomes reasonable in cost and accessible. Also, the Incorporated Forms will be updated to reflect the changes and available for use for CHFS and CSE staff.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): For the custodial parent or noncustodial parent, "reasonable in cost" was defined in HB 489, codified in KRS 403.211(8)(a), as not to exceed five percent (5%) of his or her gross income. There are no fees and no increase in funding for this administrative regulation for CHFS.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The child(ren) will benefit from being covered by their parent's private health insurance. Child support enforcement services will continue at no additional cost.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no fees and no increase in funding for this administrative regulation.

(b) On a continuing basis: There are no fees and no increase in funding for this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state general funds and federal funds under 42 U.S.C. 401-419, Title IV-D of the Social Security Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if the new, or by the change if it is an amendment: There are no fees and no increase in funding for this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation will be applied in a like manner on a statewide basis.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 651 - 654, 656, 666, 667, 669B, 45 C.F.R. 302 and 303

2. State compliance standards. KRS 194A.050(1), 205.710, 205.712, 205.725, 205.735, 205.765, 205.792, 205.793, 205.795, 403.211, 403.212, 403.213, 405.430, 405.440, 405.450, 405.520, 405.550, and 405.991.

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the 42 U.S.C. 654(4)(A), and 666(a)(10) and (c)(1).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Cabinet for Health and Family Services and the Department for Income Support, Child Support Enforcement Program are impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 651 - 654, 656, 666(a)(10) and (c)(1), 667, and 669B, 45 C.F.R. 302 and 303, KRS 194A.050(1), 205.710, 205.712, 205.725, 205.735, 205.765, 205.792, 205.793, 205.795, 403.211, 403.212, 403.213, 405.430, 405.440, 405.450, 405.520, 405.550, and 405.991.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The child support program has been operational since 1975. The amendment to this administrative regulation will not generate any revenue the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The child support program has been operational since 1975. The amendment to this administrative regulation will not generate any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost; this program has been operational since 1975.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost; this program has been operational since 1975.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Family Support

(Amendment)

#### 921 KAR 2:017. Kentucky Works supportive services.

RELATES TO: KRS 45.237-241, 205.200, 205.211, 205.2003, 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.2003(1), 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the public assistance programs. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations. KRS 205.2003(1) requires the cabinet to promulgate administrative regulations to develop a work program for recipients of public assistance to provide for immediate employment or preparation for employment, and to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation establishes requirements for receiving Kentucky Works supportive services.

Section 1. Definitions. (1) "Approved Kentucky Works activity" means participation in an allowable activity in accordance with 921 KAR 2:370, Section 2(1)(c)2(2)(e)).

(2) "Component" means a service or activity in accordance with 921 KAR 2:370, Section 2(1)(c)[2(2)(e)].

(3) "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement, in accordance with 921 KAR 2:370, and referral for removal of barriers takes place.

(4) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(5) "Improper payment" is defined by KRS 45.237(1)(d).

(6) "Kentucky Transitional Assistance Program" or "K-TAP"[.] means Kentucky's "Temporary Assistance for Needy Families" or "TANF" money payment program for a child as defined in 921 KAR 2:006.

(7) "Kentucky Works" means a program, in accordance with 921 KAR 2:370, that assists a recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(8) "Precomponent" means a waiting period between the dates of component assignment and component commencement

(9) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(10) "Work-eligible individual" is defined by 45 C.F.R. 261.2(n)

Section 2. Kentucky Works Participation and Supportive Services Payment. The cabinet shall make a payment for a supportive service cost:

(1) For an individual participating in the Kentucky Works Program, except for the exclusions listed in Section 12 of this administrative regulation;

(2) Necessary for participation in an approved Kentucky Works activity; and

(3) To the extent funds are available.

Section 3. Transportation. Transportation reimbursement shall be paid in the following situations:

(1) Precomponent;

(2) Component preparation; or

(3) Component participation.

Section 4. Transportation Payment Amount and Authorization.

(1)(a) To the extent funds are available, payment for transportation shall be provided for an individual participating in an approved Kentucky Works activity, if

1. Free transportation that meets the needs of the work-eligible individual is unavailable, and

2. The individual is required to incur a transportation expense in order to participate.

(b) If a need for transportation reimbursement for four (4) days or more is determined, a direct payment of \$200 per month to the individual shall be made through the System Tracking for Employability Program or "STEP".

(c) If a need for transportation reimbursement for less than four (4) days is determined, a payment of fifteen (15) dollars to the individual shall be made through the System Tracking for Employability Program or "STEP".]- as follows-

1. Fifteen (15) dollars for less than four (4) days per month;

2. Sixty (60) dollars for four (4) to sixteen (16) days per month;

or

3. 100 dollars for seventeen (17) or more days per month.]

(2) A payment shall be issued in accordance with 921 KAR 2:050.

(3) In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, a transportation payment shall be provided for the period of up to:

(a) Two (2) weeks prior to the scheduled start of component activity; and

(b) One (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 5. Restriction on Authorization of a Transportation Payment. A transportation payment shall not be made if the work-eligible individual is not in compliance with a Kentucky Works activity, in accordance with 921 KAR 2:370.

Section 6. Other Supportive Services. (1) To the extent funds are available, the cabinet shall provide other supportive services to a work-eligible individual if necessary for the individual's participation in the approved Kentucky Works activity forfeif:

(a) Component preparation;

(b) Component participation while the K-TAP case remains active; or

(c) Acceptance of a new job or retention of an existing one if the parent or other adult:

1. Has accepted employment and a start date of employment is provided, except if an item is required as a condition of being hired by the employer; or

2. Is employed.

(2) If requirements of subsection (1) of this section are met, the cabinet may approve an item or service needed by the work-eligible individual for participation in a Kentucky Works activity, such as:

(a) A drug screening test fee;

(b) Up to three (3) uniforms for employment, if not reimbursable by the employer;

(c) One (1) suitable interview outfit for preemployment purposes;

(d) Required clothing or shoes particular to a service, profession, or company, if not reimbursable by the employer;

(e) School supplies and books;

(f) A licensing fee which includes:

1. Exam costs required to obtain a professional license or certificate; or

2. Driver's license fee;

(g) A timepiece necessary for employment or training;

(h) The cost to have a photo identification;

(i) The cost of a criminal records check fee, if required by the provider or employer;

(j) A driver's education class fee; or

(k) Tools required for employment.

(3) Payment for other supportive services shall be limited to a cumulative total of \$400 per individual in a twelve (12) month period, beginning with the first day of the month in which the initial payment is issued.

(4) A penalized or sanctioned work-eligible individual shall not be eligible for other supportive services.

(5) A retroactive payment for other supportive services shall not be made for an item purchased by a penalized or sanctioned work-eligible individual who later cures the penalty. After the individual cures the penalty or sanction, an eligible expense may be authorized.

(6) Except in accordance with Section 7 of this administrative regulation, a medical service or item shall not be an allowable supportive service.

Section 7. Allowable Medical Service or Item. To the extent non-TANF funding is available, the purchase of the following item or service shall be allowed for a work-eligible individual, if needed for participation in the Kentucky Works activity and not reimbursable through Medicaid and limited to:

(1) Eyeglasses or corrective lens;

(2) Dentures;

(3) Hearing aids; and

(4) Medical service or item required as a condition of employment.

Section 8. Car Repairs. (1) If a free service for car repairs, including a vocational school automotive program, is unavailable that meets the needs of the work-eligible individual, a car repair expenditure shall be provided, to the extent funds are available, if necessary for participation in the approved Kentucky Works activity of:

(a) Component preparation; or

(b) Component participation, including employment while the K-TAP case remains active.

(2) Car repair expense shall meet the following criteria to be considered for payment:

(a) Car repair that makes the car functional;

(b) Property tax on the vehicle;

- (c) Vehicle registration;
- (d) Licenses fee;
- (e) Liability insurance to drive a vehicle;
- (f) New or used automotive part to be purchased by the work-eligible individual to make the car functional; and
- (g) Other car expense needed by the work-eligible individual that would allow participation in the Kentucky Works activity.

(3) Prior to the approval of a car repair expenditure listed in subsection (2) of this section, the work-eligible individual shall provide an estimate of the cost.

(4) Auto repair work shall:

- (a) Be completed by a garage, unless the repair is completed by a vocational school automotive program; or
- (b) Be the responsibility of the work-eligible individual if a payment is made for a new or used automotive part as specified in subsection (2)(f) of this section.

(5) Prior to approval of a car repair expenditure, the cabinet shall verify the work-eligible individual owns the vehicle.

(6) The restrictions on authorization and verification of a supportive service payment described in Section 12 of this administrative regulation shall apply to a car repair expense and payment.

(7) Payment for car repairs shall be limited to a cumulative total of \$1,500 per eligible family during a twelve (12) month period, beginning with the first day of the month in which the initial payment is issued.

**Section 9. Short-term Training.** To the extent funds are available, a fee for a short-term training program shall be eligible for payment for a work-eligible individual if the training program is

- (1) Not eligible for federal financial aid; and
- (2) Likely to lead to paid employment, in accordance with:
  - (a) The work-eligible individual's transitional assistance agreement; and
  - (b) 921 KAR 2:370.

**Section 10. Required Fees.** (1) To the extent funds are available, the following payment may be made for a work-eligible individual in compliance with Kentucky Works requirements:

- (a) A training registration fee;
  - (b) Financial aid application fee;
  - (c) Testing fee;
  - (d) Application fee required by a vocational school for a specified program;
  - (e) Liability insurance fee;
  - (f) Copy of records fee;
  - (g) Activity fee if mandated by the institution; or
  - (h) Other required fee.
- (2) Required fees shall not exceed \$200 per payment.

**Section 11. Educational Bonus.** (1) An educational bonus of \$250 per individual shall be paid to a K-TAP adult or child who reports and verifies:

- (a) Receiving a:
  - 1. High school diploma;
  - 2. GED certificate; or
  - 3. Postsecondary school certificate or degree; or
  - (b) Graduating from English as a second language class.
- (2) A short-term training program shall not qualify for postsecondary education.
- (3) A K-TAP adult or child shall be limited to only one (1) payment for:
  - (a) Receiving a postsecondary certificate or degree; or
  - (b) Graduating from an English as a second language class.
- (4) A K-TAP adult or child shall earn the diploma, certificate, or degree while receiving K-TAP.
- (5) A K-TAP applicant or recipient shall be advised of the educational bonus and be reminded of available work incentives:
  - (a) During application;
  - (b) At recertification; and
  - (c) Through periodic mailings.

**Section 12. Restrictions on Authorization of Supportive Service Payments.** (1)(a) To verify an expense and authorize a supportive service payment, except as provided in Section 5 of this administrative

regulation, a PA-32, Authorization for Supportive Services Payments, shall be completed.

(b) PA-32, Authorization for Supportive Services Payments, shall be valid for thirty (30) calendar days from the date issued by the cabinet.

(2) A payment shall not be made for the period during which:

(a) A valid PA-32, Authorization for Supportive Services Payment, is not returned; or

(b) The work-eligible individual is:

- 1. Penalized for noncompliance with a Kentucky Works activity, as specified in 921 KAR 2:370; or
- 2. Ineligible.

(3) A supportive service payment shall be issued in accordance with 921 KAR 2:050.

**Section 13. Hearings and Appeals.** An applicant or recipient of supportive services who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing in accordance with 921 KAR 2:055.

**Section 14. Improper Payments.** The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

**Section 15. Incorporation by Reference.** (1) "PA-32, Authorization for Supportive Services Payments", edition 11/09[2/09], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: October 23, 2009

FILED WITH LRC: November 2, 2009

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD.** A public hearing on this administrative regulation shall, if requested, be held on December 21, 2009 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2009 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 4, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON.** Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the types and financial limitations on supportive services for Kentucky Works Program (KWP) participants.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform conditions and requirements regarding the payment of KWP supportive services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.002 requires the Cabinet for Health and Family Services to prescribe by administrative regulation the conditions of eligibility for public assistance in conformity

with federal statutes and regulations. This administrative regulation establishes the requirements and payment maximums for KWP support services. KWP is the work program under the Kentucky Temporary Assistance Program (K-TAP), the assistance program funded by the Temporary Assistance for Needy Families (TANF) block grant authorized by 42 U.S.C. 601-619 or Title IV-A of the Social Security Act. This administrative regulation establishes supportive services in conformity with the Title IV-A State Plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of eligibility criteria and financial limitations for all KWP supportive services, including transportation, other supportive services, allowable medical services or items, car repairs, short-term training, required fees and educational bonuses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to increase supportive services for car repairs from a cumulative total of \$500 to \$1,500 per eligible family during a twelve month period, beginning with the first day of the month in which the initial payment is issued. This amendment increases the payment for transportation expenses for four (4) or more days per month to \$200 per month. Additionally, this amendment clarifies that K-TAP adults or children shall receive only one educational bonus for a postsecondary education certificate or degree and only one bonus for completing an English as a Second Language class.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure KWP participants have transportation needs met for the purposes of gaining and retaining employment and self-sufficiency. The increase in transportation payments is necessary to offset the increased costs of gasoline and assist in removing transportation as a barrier to participation in the Kentucky Works Program. The maximum amount allotted for a car repair did not adequately meet the actual costs realized by KWP participants. In addition, the amendment is necessary to clarify payment policy for educational bonuses. The increase in supportive services will combine with other benefits to give incentive to participants to retain and sustain employment; will align with other efforts to support Kentucky's overall participation rate for federal funding; and will protect and create jobs through improved accessibility, job stability, and reduction in public assistance dependency.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this regulation conforms to KRS 205.2003(3) by prescribing the types and conditions for supportive services to assist in the pursuit of work and self-sufficiency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through its refinement of the types and financial limitation of supportive services to foster work and self-sufficiency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving assistance from K-TAP and are required to participate in a KWP activity. As of August 2009, there were 23,484 K-TAP families of which 9,014 recipients were required to participate in KWP.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require no additional action by participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no cost to KWP participants.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Kentucky Works Program participants will benefit from the increase in supportive services, which will enable the participants to meet the actual costs of car repairs and transportation expenses, and promote work and their self-sufficiency. In addition, K-TAP recipients and KWP participants will have clearer instructions as to when an educational bonus may be requested.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation will result in a projected net increase of \$4,180,000 for supportive services the remainder of this fiscal year.

(b) On a continuing basis: The amendment to this administrative regulation will result in a projected net increase of \$8,360,000 for supportive services each year thereafter.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-A or TANF and General Funds used to meet Maintenance of Effort requirements are the funding sources for this administrative regulation. Kentucky has not fully expended its federal Title IV-A or TANF dollars. This amendment will be within the existing federal Title IV-A or TANF allocation. No new funding for its first year or subsequent years is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required. This amendment will be within the existing federal allocation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied since application of policy is applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.200(2), 205.2003(1),

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This question is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), KRS 45.237-241, KRS 205.200, 205.211, 205.2003, 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This

amendment will not directly generate any revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Kentucky Works Program (KWP) has been operational since October 1996 and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Kentucky Works Program (KWP) has been operational since October 1996 and does not directly generate any revenue. This amendment will not generate any additional revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? The KWP program has been operational since October 1996. The amendment to this administrative regulation will result in a projected net increase of \$4,180,000 for supportive services for the remainder of this fiscal year and \$8,360,000 each year thereafter. Kentucky has not fully expended its federal Title IV-A or TANF dollars. This amendment will be within the existing federal Title IV-A or TANF allocation. No new funding for its first year or subsequent years is required.

(d) How much will it cost to administer this program for subsequent years? Please refer to the response in item (c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
Department for Community Based Services  
Commissioner's Office  
(Amendment)

**922 KAR 1:320. Service appeals.**

RELATES TO: KRS Chapter 13B, 194A.005, 194A.030(8), 199.555(2), 194B.005, 194B.030(8), 199.557, 209.020(4), (5), 209A.020(4), (5), 600.020(42)(44), 605.090(1)(b), (6), 620.020(1), 620.180(2)(a)1, 620.230, 45 C.F.R. 98.2, 205.10, 1355.21(b), 1355.30(p), 29 U.S.C. 794, 42 U.S.C. 625, 629a, 671(a)(23), 673, 675, 9858-9858g(4), EO 2004-726]

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 29 U.S.C. 794]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) designates the Cabinet for Health and Family Services as the primary state agency responsible for leadership in protecting and promoting the well-being of Kentuckians through the delivery of quality human services. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds. Including EO 2004-726 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services. 45 C.F.R. 205.10, made applicable to titles IV-B and title IV-E programs by references in 45 C.F.R. 1355.21(b) and 1355.30(p), requires a state to provide for a system of hearings for persons aggrieved by an agency action resulting in the denial, suspension, reduction, modification, or termination of services or federally-funded benefits, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 through 6]. This administrative regulation establishes procedures related to appeals and complaints for benefits and services under 922 KAR Chapters 1 through 5.

Section 1. Definitions. (1) "Adoption assistance" means a payment under:

(a) KRS 199.555(2), 199.557, and 922 KAR 1:050, State-funded Approval of adoption assistance; or

(b) KRS 199.557 and 922 KAR 1:060, Federal Title IV-E adoption assistance

(2) "Adult" is defined by KRS 209.020(4) or 209A.020(4).

(3) "Caretaker relative" means a relative:

(a) With whom a child is, or shall be, placed by the cabinet; and

(b) Who is seeking to qualify as a kinship caregiver in accordance with 922 KAR 1:130, Kinship Care Program.

(4) "Case plan" is:

(a) Defined by 42 U.S.C. 675(1) and described by KRS 620.230 for a child placed outside the home; and

(b) Described in 922 KAR 1:430, Child Protective Services In-home Case Planning and Service Delivery, for a child who remains in the home.

(5) "Case permanency plan" is defined by KRS 620.020(1) and described in KRS 620.230 for a child placed outside the home.

(6) "Case planning conference" means a meeting in which a case plan or a case permanency plan is developed or modified in accordance with KRS 620.180(2)(a)1 [(6) "Certified family child care home provider" means a caregiver certified under 922 KAR 2:100, Certification of family child care homes.]

(7) "Child care assistance" means subsidy benefits as described by 922 KAR 2:160, Child Care Assistance Program.

(8) "Child welfare services" is defined by 42 U.S.C. 625 and described in 42 U.S.C. 629a.

(9) "Commissioner" means the Commissioner of the Department for Community Based Services or designee.

(10) "Contract agency" means a business or organization that offers child welfare, adult or domestic violence protective, or child care services to the public through a contract or agreement with the cabinet.

(11) "General adult services" means a voluntary preventative service in accordance with 922 KAR 5.090, General adult services.

(12) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal in accordance with Section 6(7) of this administrative regulation.

(13)[(42)] "Kinship caregiver" means a qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care in accordance with 922 KAR 1:130, Kinship Care Program.

(14)[(43)] "Parent" is defined by:

(a) KRS 600.020(42) and 42 U.S.C. 675(2) for child welfare benefits and services; or

(b) 45 C.F.R. 98.2 for child care assistance.

(15)[(44)]

(14) "Protective services" [for a vulnerable adult] is defined by KRS 209.020(5) or 209A.020(5).

(16)[(45)] "Registered child care provider" means a caregiver registered under 922 KAR 2:180, Requirements for registered child care providers[unregulated provider registration] in the Child Care Assistance Program.

(17)[(46)] "Resource home" means a home in which an individual has been approved[certified] by the cabinet in accordance with 922 KAR 1:350, Family preparation, to:

(a) Provide foster care services for a child placed by the cabinet;

(b) Adopt a child:

1. Whose parents' parental rights have been terminated; and
2. Who is under the custodial control of the cabinet; or

(c) Provide respite service for a family approved to care for a child under the custodial control of the cabinet.

Section 2. Right to Appeal. (1) A parent may request review of the following through an administrative hearing:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with.

1. 922 KAR 1:330, Section 11(3); or

2. 922 KAR 1:430, Section 4(4)(b); or

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;

2. Complete a case plan, or case permanency plan.



3. Provide or refer for services as specified in the case plan or case permanency plan; or

4. Meet the mandated time frames for child protective services specified in 922 KAR 1.330.

(2) A resource home parent or adoptive parent may request review of the following through an administrative hearing:

(a) Failure by the cabinet to:

1. Process reimbursement to a resource home with reasonable promptness;

2. Provide information required by KRS 605.090(1)(b) and (6);

3. Advise an adoptive parent of the availability of adoption assistance in accordance with [42 U.S.C. 673 and] 922 KAR 1.050, Approval of adoption assistance, or 922 KAR 1.060, Federal Title IV-E adoption assistance; or

4. Provide an adoptive parent, except as otherwise required by law, with known relevant facts regarding the:

a. Child;

b. Child's background prior to finalization of the adoption; and

c. Child's biological family;

(b) Determination of ineligibility for adoption assistance upon execution of an adoptive placement agreement under 922 KAR 1.050, Approval of adoption assistance, or 922 KAR 1.060, Federal Title IV-E adoption assistance;

(c) Denial of a request for a change in payment level due to a change in circumstances of an adoptive parent or child at the time of renewal of an adoption assistance agreement under 922 KAR 1.050, Approval of adoption assistance, or 922 KAR 1.060, Federal Title IV-E adoption assistance; or

(d) Closure of a resource home under 922 KAR 1.350, Family preparation, unless a provision of Section 3(1)(f), (g), (h), or (i) of this administrative regulation applies.

(3) An approved and available adoptive parent [family] outside the jurisdiction with responsibility for handling the case of an adoptive child may request an administrative hearing for the cabinet's denial or delay in placement of the child for adoption pursuant to 42 U.S.C. 671(a)(23).

(4)(a) Pursuant to 922 KAR 1.130, Section 19(1), a kinship caregiver may request an administrative hearing under the provisions of this administrative regulation for denial by the cabinet of:

1. Supportive services to facilitate the child's placement with the kinship caregiver; or

2. A request for start-up costs to facilitate the child's adjustment to the new environment with the kinship caregiver.

(b) Pursuant to 922 KAR 1.130, Section 19(2), a kinship caregiver who is dissatisfied with an action or inaction on the part of the cabinet relating to financial assistance under the Kinship Care Program may request an administrative hearing under the provisions of 921 KAR 2.055, Hearings and appeals.

(5) An applicant determined by the cabinet to be ineligible for a tuition waiver may request an administrative hearing pursuant to 922 KAR 1.450, Section 3.

(6) An applicant determined by the cabinet to be ineligible for an educational and training voucher may request an administrative hearing pursuant to 922 KAR 1.500, Section 5.

(7) An adult may request review of the following through an administrative hearing:

(a) The cabinet's denial of [a] general adult services [service] or protective services [service] to an adult identified as a victim of abuse, neglect, or exploitation; or

(b) Failure by the cabinet to respond with reasonable promptness to a request for:

1. General adult services; or

2. Protective services for an adult

(8) ~~[An applicant for child care certification or a certified family child care home provider may request review of the following actions through an administrative hearing under 922 KAR 2.100, Certification of family child care homes-~~

~~(a) Denial of certification;~~

~~(b) An intermediate sanction;~~

~~(c) Suspension of certification for a nonemergency situation; or~~

~~(d) Revocation of certification.~~

(9) An applicant for child care assistance or the parent of a child receiving assistance may request an administrative hearing ~~[appeal before the cabinet's designee under the provisions of~~

~~Section 7 of this administrative regulation] for the denial, reduction, suspension, or termination of benefits pursuant to [under] 922 KAR 2:160, Section 18 [Child Care Assistance Program]~~

~~(9) [(10)] An applicant for child care registration or a registered child care provider may request an administrative hearing in accordance with 922 KAR 2.180, Section 9 [appeal before the cabinet's designee under the provisions of Section 7 of this administrative regulation for denial or termination of a child care provider's registration under 922 KAR 2:180, Requirements for unregulated provider registration in the Child Care Assistance Program].~~

~~(10) [(14)] An individual aggrieved by an action of the cabinet may request [review of the following through] an administrative hearing for a-~~

~~(a) Any other matter by which a Kentucky Revised Statute [state law] or 922 KAR Chapters 1 through 5 [6] expressly permits the appeal of a cabinet action or alleged act.~~

~~(11) A parent or an adult aggrieved by an action of the cabinet may request review of the following through an administrative hearing:~~

~~(a) [;~~

~~(b) A cabinet denial, reduction, suspension, or termination of services or federally-funded benefits, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 through 5 [6]; or~~

~~(b) [(e)] A cabinet failure to act with reasonable promptness to a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 through 5 [6].~~

Section 3. Matters Not Appealable through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing:

(a) A matter in which a court:

1. Has previously made a judicial determination or issued an order on the same issue being appealed; or

2. Is currently engaged in legal proceedings regarding the same issue being appealed,

(b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;

(d) Failure to submit a written request for appeal within the time frame established by Section 6(4)(b) of this administrative regulation;

(e) A decision to deny:

1. Approval of an individual seeking to provide foster or adoptive services in accordance with 922 KAR 1.350 or 922 KAR 1.310; or

2. A caretaker relative approval as a kinship caregiver if the caretaker relative fails to meet the provisions of 922 KAR 1.130, Section 5;

(f) Removal of a foster child from a resource home if the resource home parent or another individual residing in the home has been found by the cabinet to have abused, neglected, or exploited a child and the:

1. Resource home parent or other individual waived the right to appeal the substantiated incident; or

2. Substantiated incident was upheld after:

a. An administrative hearing; or

b. Judicial review;

(g) Removal of a child from a resource home for the purpose of:

1. Achieving a permanency goal described by 922 KAR 1.140, Foster care and adoption permanency services; or

2. Uniting or reuniting the child with a sibling at the next placement,

(h) Closure of a resource home if the cabinet has not placed a child in the home within the previous two (2) years;

(i) Closure of a resource home according to the terms of the contract between the cabinet and the resource home;

(j) A situation where state or federal law requires adjustment of a payment or grant, except when a payment or grant computation is incorrect;

(k) The per diem rate of reimbursement paid to a resource



home parent who provides foster care services; or

(l) Decision to not recommend a resource home parent in accordance with 922 KAR 1:350, Section 9(12)(14) for enrollment in specialized training as an emergency shelter, medically fragile, specialized medically fragile, or care plus resource home.

(2) A complaint of discrimination may be filed with the cabinet's Office of Human Resource Management in accordance with 920 KAR 1:090[Equal Opportunity Office].

Section 4. Service Complaints. (1) If a matter is not subject to review through an administrative hearing, a parent, caretaker relative, kinship caregiver, or an adult[an individual] may:

(a) [Contact the cabinet's Office of the Ombudsman if the matter was not previously reviewed by that office; or

(b) Attempt to resolve the issue by submitting a written complaint[request] to the service region administrator or designee within thirty (30) calendar days after the date of the cabinet action or alleged act; or

(b) Contact the cabinet's Office of the Ombudsman if the matter was not previously reviewed;

1. By that office; or

2. Pursuant to paragraph (a) of this subsection.

(2)(a) The service region administrator, administrator's designee, or the cabinet's Office of the Ombudsman shall provide a written response to the complainant within thirty (30) calendar days of receipt of a written complaint not subject to review through an administrative hearing.

(b) The commissioner or the ombudsman may grant an extension to the response timeframe given in paragraph (a) of this subsection if:

1. Extenuating circumstances prolong the review of the complaint; and

2. Notice of the extension is provided to the complainant.

(3)(a) A parent, caretaker relative, kinship caregiver, or an adult dissatisfied with a written response rendered by the service region administrator, administrator's designee, or the Office of the Ombudsman may request that the commissioner review the complaint and the written response.

(b) A request for review shall be submitted in writing to the commissioner within ten (10) days of receipt of the written response provided in accordance with subsection (2) of this section.

(c) Upon completion of the review, the commissioner shall render a written recommendation regarding the complaint within thirty (30) days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the complainant of the need for an extension to the timeframe specified in this paragraph.

(d) The department shall abide by the written final response.

(4) The department shall compile data regarding service complaints to:

(a) Fulfill federal and state reporting requirements; and

(b) Use for program development and evaluation [(2) The cabinet shall provide a written response to the complainant within thirty (30) calendar days of receipt of a request for resolution of a matter not subject to review through an administrative hearing.

(3) A service region administrator or designee shall submit a monthly report to the commissioner or designee. The report shall state the:

(a) Number of customer service complaints;

(b) Nature of each complaint; and

(c) Cabinet's written response to each complaint.]

Section 5. Appeal of a Child Abuse or Neglect Investigative Finding. An individual who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's finding through an administrative hearing in accordance with 922 KAR 1:480, Appeal of child abuse and neglect investigative findings.

Section 6 Request for Appeal. (1) The cabinet shall provide a copy of the;

(a) DPP-154, Protection and Permanency Service Appeal Request, [form DPP-154,] to an individual:

1. [(a)] At each case planning conference;

2. [(b)] Upon application for approval as a Certified family child care home provider;

(e) Upon denial, reduction, modification, suspension, or termination by the cabinet of:

a. [1-] Child welfare services provided by the cabinet;

b. [2-A] General adult services or protective services[service], if notification does not present a risk of harm to the victim;

c. [3-] Adoption assistance; or

d. [4-] Other federally-funded program benefit described in 922 KAR Chapter 1, 3, or 5[Chapters 1 through 6]; or

3. [(d)] Upon determination that a student is not eligible for a tuition waiver or education and training voucher;

(b) DCC-88, Child Care Service Appeal Request, to an individual:

1. Upon the denial, reduction, or termination of child care assistance;

2. In accordance with 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program for a:

a. Withdrawal or denial of child care registration application, not at the request of the applicant; or

b. Revocation or closure of a registered child care provider, not at the request of the provider;

3. Upon a reduction or revocation of a child care provider's STARS level in accordance with:

a. 922 KAR 2:170, STARS for KIDS NOW Program Type I licensed child-care centers; or

b. 922 KAR 2:210, STARS for KIDS NOW Program for Type II licensed and certified family child-care homes; or

4. Upon a revocation of a trainer's credential in accordance with 922 KAR 2:240, Kentucky Early Care and Education Trainer's Credential and training approval.

(2) At least ten (10) days prior to the denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall hand-deliver or mail a:

(a) DPP-154A, Protection and Permanency Notice of Intended Action;

(b) DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals; or

(c) Notice in accordance with 922 KAR 2:160, Section 12(7).[-

(2) The cabinet shall hand-deliver or mail a Notice of Intended Action, form DPP-154A, at least ten (10) days prior to the denial, reduction, modification, suspension, or termination of a service.]

(3) The cabinet may take emergency action under KRS 13B.125.

(4) A request for appeal shall:

(a) Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance;

(b) Be submitted to the cabinet no later than thirty (30) calendar days from the date:

1. That the notice provided in accordance with subsection (2) of this section[DPP-154A] was issued; or

2. Of the occurrence of the disputed action;

(c) Describe the:

1. Cabinet action in dispute; or

2. Alleged act;

(d) Specify.

1. The reason the appellant disputes the cabinet's action; and  
2. Name of each cabinet staff person involved with the disputed action, if known; and

3. Date of the cabinet action or alleged act in dispute; and

(e) Include the notice provided in accordance with subsection (2) of this section[DPP-154A], if available.

(5)(a) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject to review through an administrative hearing

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the:

1. [(a)] Matter is not appealable; and

2. [(b)] Resolution of the matter may be pursued through the service complaint process described in Section 4 of this administrative regulation.

(6) If the cabinet receives a written request for appeal within

ten (10) calendar days from the date the notice provided in accordance with subsection (2) of this section [DPP-154A] was issued or date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the outcome of the appeal.

(7) The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification may include [includes]:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing [failure to file or participate was not the fault of the individual or authorized representative].

Section 7. Administrative Hearing. (1) Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B.

(2) Unless waived by the appellant, final administrative action shall be taken in accordance with the ninety (90) day time frame established by KRS 13B.120(4).

Section 8. Contract Agencies. (1) A contract agency [~~or an agency with which the cabinet has a written agreement~~] shall offer a complaint process consistent with:

(a) Section 4 [service appeal process consistent with the requirements] of this administrative regulation; or

(b) Provisions of the contract or agreement between the contract agency and the cabinet, if the provisions are different from Section 4 of this administrative regulation

(2)(a) An individual dissatisfied with a final written decision rendered by a contract agency in response to a complaint [or an agency with which the cabinet has a written agreement] may request that the commissioner [cabinet] review the complaint and the final decision.

(b) A request for review shall be submitted to the commissioner [cabinet] within ten (10) days of the contract agency's final decision.

(c) Upon completion of the review, the commissioner [~~or designee~~] shall render a written recommendation regarding the complaint within thirty (30) days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the client of the need for an extension to the timeframe specified in this subparagraph.

(d) The contract agency shall abide by the recommendation.

Section 9 Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-88, Child Care Service Appeal Request", edition 11/09;

(b) "DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals", edition 11/09;

(c) "DPP-154, Protection and Permanency Service Appeal Request", edition 11/09; and

(d) "DPP-154A, Protection and Permanency Notice of Intended Action", edition 11/09 [a) "DPP-154, Service Appeal Request, edition 06/04"; and

(b) "DPP-154A, Notice of Intended Action, edition 06/04"]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: November 9, 2009

FILED WITH LRC: November 9, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 2009, at 9 a.m. in the Health Services

Board Room, Health Services Building, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2009, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 4, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does. This administrative regulation establishes the procedures related to service appeals and complaints for benefits and services under 922 KAR Chapter 1 through 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide service appeal and complaint procedures as expressly permitted by 922 KAR Chapters 1 through 5 and Kentucky Revised Statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with due process standards set forth in KRS Chapter 13B and 45 C.F.R. 205.10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS Chapter 13B and 45 C.F.R. 205.10 by establishing procedures related to due process and service complaints.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendment to 922 KAR 1:320 includes the following: statutory and regulatory citation updates to reflect enacted legislation and the adoption of regulatory amendments and new administrative regulations; further specificity about the individuals who may request an appeal inclusive of privately approved adoptive parents and applicants/recipients of child care assistance; revision to the service complaint process to specify the individuals who may submit a service complaint and establish the process as a two-tiered process; addition of forms to distinguish program areas; requirement of a complaint process, rather than administrative hearing requirement, for contractors and establishment of the process as two-tiered with final end point; and technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to clarify the cabinet's procedures for due process and service complaints.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the due process standards in KRS Chapter 13B and 45 C.F.R. 205.10.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of KRS Chapter 13B and 45 C.F.R. 205.10 by establishing procedures related to due process and service complaints.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts individuals who request an administrative hearing or submit a service complaint to the cabinet as permitted by 922 KAR Chapters 1 through 5

or Kentucky Revised Statute. The total number of service appeal issues received in calendar year 2008 was 579. Of those, approximately 10% were considered appealable through an administrative hearing.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment to this administrative regulation clarifies the service appeal and complaint procedures, and matters which are subject to review through an administrative hearing or service complaint before the cabinet.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities identified in question (3) will not realize any costs as a result of the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation ensures greater clarity regarding the cabinet's procedures for service appeals and complaints and affords service appeals to recipients of the Child Care Assistance Program who are subject to adverse action.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially. There will be no new costs associated with the implementation of this administrative regulation. At present, no new administrative hearing officer is necessary to extend administrative hearing rights to CCAP recipients. Providers have existing hearing rights.

(b) On a continuing basis: There will be no new costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Social Services Block Grant, Child Care and Development Fund Block Grant, Title IV-E (of the Social Security Act) funds are federal funds that support the implementation and enforcement of this administrative regulation. State General Funds are also utilized.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. The amendment to this administrative regulation does not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? This administrative regulation does not require tiering, as these policies will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 205.100, 1355.21(b), 1355.30(p)

2. State compliance standards KRS Chapter 13B, 194A.010(2), 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 205.100, 1355.21(b), 1355.30(p)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different requirements or responsibilities than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including

cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 194A.010(2), 194A.050(1), 45 C.F.R. 205.100, 1355.21(b), 1355.30(p)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues for the subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will generate no new costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will generate no new costs in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Amendment)

#### 922 KAR 2:160. Child Care Assistance Program.

RELATES TO: KRS [45.237-45.244,] 81.010, [486.040,] 199.892, 199.894(1),(5), 199.896, 199.898(1), (2), 199.8982, 199.899, 199.8994, [202A-011(12),] 214.036, 314.011(5), 600.020(48)(47), 605.120(5), 620.020(9), 7 C.F.R. 1463, 2012.20 C.F.R. 652, 660-671, 45 C.F.R. 98, 205.10(a)(6), [205.10(6),] 400.66(d), 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723(a)(5), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1451, 1771, 1775, 2000d, 3001, 4950-5084, 8621, 9902(2), 10602(c), Pub L 110-246

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 601-619, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available

Section 1. Definitions. (1) "Applicant" means a child's natural or

adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that affects eligibility or benefit amounts and includes:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;
- (h) Beginning or ending an educational activity;
- (i) Change in child care provider;
- (j) Change in address or residence; ~~or~~
- (k) Change in marital status; or
- (l) Beginning or ending receipt of unearned income.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child care and development fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined in 922 KAR 1:330, Section 1(3).

(9) "Child with a special need" means a child who has a severe problem or multiple problems that require ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week, ~~for:~~

- (a) ~~Wages;~~
- (b) ~~Self-employment;~~
- (c) ~~Student teaching, internship, or practicum; or~~
- (d) ~~A combination of the above.]~~

(11) "Family" means an applicant or parent, and a child, ~~related by blood or law who reside in the same residence~~ and another responsible adult if present, residing in the same home.

(12) "Family child-care home":

- (a) Is defined by KRS 199.894(5),
- (b) Is described in KRS 199.8982; and
- (c) Means a home certified in accordance with 922 KAR 2:100.

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Health professional" means a person actively licensed as a:

- (a) Physician;
- (b) Physician's assistant;
- (c) Advanced registered nurse practitioner;
- (d) Qualified mental health professional as defined by KRS 600.020(48)(47), or
- (e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(15) "In loco parentis" means a person acting in place of a parent, including:

- (a) A legal guardian; ~~or~~
- (b) An individual related by blood, marriage, or adoption to the child; or
- (c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(16) "Infant" means a child who is less than one (1) year old.

(17) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(18) "Nonurban" means a county without a first, second, or third class city as specified in KRS 81.010(1) through (3).

(19) "Parent" is defined by 45 C.F.R. 98.2.

(20) "Part day" means child care that is provided for less than

five (5) hours per day.

(21)(20) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(22)(24) "Preventive services" is defined by KRS 620.020(9).

(23)(22) "Provider" means the entity providing child care services.

(24)(23) "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(15).

(25)(24) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(26)(26) "Related" means having one (1) of the following relationships with the provider:

- (a) [4-] Child;
- (b) [2-] Stepchild;
- (c) [3-] Grandchild;
- (d) [4-] Great-grandchild;
- (e) [5-] Niece;
- (f) [6-] Nephew;
- (g) [7-] Sibling; ~~or~~
- (h) [8-] Child in legal custody of the provider; or
- (i) Child living with the provider acting in loco parentis.

(27)(26) "Responsible adult" means a person other than the applicant who is in the child's household and who is:

- (a) The natural parent, adoptive parent, or stepparent; or
- (b) The spouse of an individual caring for a child in loco parentis.

(28)(27) "School-age child" means a child who has reached the sixth birthday.

(29)(28) "Teenage parent" means a parent who is[-

- (a) nineteen (19) years of age or younger; and
- (b) ~~Attending high school or pursuing a GED.~~

(30)(29) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

(31)(30) "Urban" means a county listed in KRS 81.010(1) through (3) as having a first, second, or third class city.

Section 2 Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. ~~On the date~~ a signed DCC-90, Application for Subsidized Child Care Assistance, or DCC-90.1, Intent to Apply for Child Care Assistance is received at the cabinet or its designee office; or

2. ~~The~~ On the date the agency is contacted, if the person:

- a. Has a physical or mental disability; and
  - b. Needs special accommodation due to the impairment.
- (b) If the applicant is physically unable to come to the office to apply, the applicant ~~the~~ may designate an authorized representative to make application.

(c) The applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:

- 1. Deaf; or
- 2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, and 7 of this administrative regulation.

(a) The applicant or recipient shall be the primary source of information and shall:

- 1. Furnish verification of
  - a. Income; and
  - b. Technical eligibility; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Send a DCC-105, Child Care Assistance Program Notice of Action, to the applicant in accordance with Section 11(5) of this administrative regulation to provide written notification of the decision within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section. [A decision shall be made on an application and written notification sent to the applicant within thirty (30) calendar days of receipt of the application form.]

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

1. Resident of Kentucky; and
2. U.S. citizen or qualified alien;

(b) Is under age:

1. Thirteen (13); or
2. Nineteen (19) and is:

a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a:

(i) health professional; (ii) ~~Collateral agency approved by the cabinet, including a school or comprehensive care center, or~~

(iii) ~~Cabinet employee or designee through a child protective service or preventive service authorization;~~

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

- a. Licensed child care center;
- b. Certified child care home;
- c. Public school;
- d. Head Start; or
- e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or food stamp assistance case in which the child in need of child care assistance is included;

(d) A person living in the same residence~~(home)~~ as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2.090, Child care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) An alternative program such as Head Start, state preschool, or state kindergarten; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) [(1)] An applicant who has employment an average twenty (20) hours per week;

(b) [(2)] An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) [(3)] An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d) An applicant who:

1. Loses employment through no fault of their own up to four (4) weeks;

2. Is on maternity leave for up to six (6) weeks; or

3. Is on medical leave from employment due to a health condition verified by a health professional for up to six (6) weeks;

(e) ~~or~~

(4) A relative caregiver pursuant to the conditions of a program established by KRS 605.120(5), who meets:

1. [(a) Meets] All requirements in this section; and

2. [(b) Meets] Income eligibility standards in Section 7(1), or  
(f) A teen parent attending high school or pursuing a general equivalency degree (GED).

(2) An applicant eligible in accordance with this section shall sign and return the DCC-91, Client Rights and Responsibilities Sheet, and the DCC-94, Child Care Service Agreement and Certificate

Section 5. Requirements for Protection and Permanency Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan.

(3) A child who participates in the CCAP as a result of a child protective or preventive services authorization[-

(a)] shall not be eligible for more than six (6) months without further authorization.

(4)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 10 of this administrative regulation for child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.

(5) An applicant eligible in accordance with this section shall sign and return the DCC-91 [-and

(b) May have the family copayment required by Section 10 of this administrative regulation waived by the cabinet based on an assessment in accordance with 922 KAR 1:330. If the family copayment is waived, the reason for the waiver shall be documented in the protective or preventive services plan.]

Section 6. Kentucky Works Child Care Eligibility Determination.

(1) A child shall be eligible for CCAP if the child:

(a) Resides with an applicant who is participating in the Kentucky Works Program described in 921 KAR 2:370; and  
(b) Meets the requirements listed in Section 3 of the administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application as an integral part of a Kentucky Works Program self sufficiency plan.

(3) An applicant eligible in accordance with this section shall sign and return the DCC-91.

Section 7. Income Eligibility. (1) A child shall be eligible for the CCAP if the family's income is less than or equal to:

(a) 150 percent of the federal poverty level at the initial application; or

(b) 165 percent of the federal poverty level at the redetermination.

(2) A family that becomes ineligible for K-TAP shall remain eligible for CCAP for twelve (12) months from the date of the K-TAP discontinuance, if the family's income remains less than or equal to 165 percent of the federal poverty level.

(3) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(4) A child that is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(5) Excluded income shall be:

(a) ~~All income received by or on behalf of a child;~~

(b) K-TAP child only payments, including back payment;

(b)(1) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(c)(1) Educational grant, loan, scholarship, and work study income;

(d)(1) ~~including:~~

1. ~~Payment obtained and used under a condition that precludes the recipient's use for current living cost; and~~

2. ~~An education grant or loan to an undergraduate made or insured under a program administered by:~~

a. ~~The United States Commissioner of Education; or~~

b. ~~The Bureau of Indian Affairs;~~

(e) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(e)(1) The value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly ~~food stamp~~ allotment under the Supplemental Nutrition Assistance Program (formerly known as the Food Stamp Program);

a. Defined by 7 U.S.C. 2012, as amended by P.L. 110-246; and

b. Governed by Title 921 KAR Chapter 3.

(f)(1)

(g) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(g)(1) In-kind income;

(h)(1) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i)(1) Nonemergency medical transportation payment;

(i)(2) Highway relocation assistance;

(k)(1) Urban renewal assistance;

(l)(1) Federal disaster assistance and state disaster grant;

(m)(1) Home produce utilized for household consumption;

(n)(1) Housing subsidy received from federal, state, or local governments;

(o)(1) Receipt distributed to a member of certain Indian tribes

by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(p)(1) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q)(1) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r)(1) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s)(1) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t)(1) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(u)(1) The principal of a verified loan;

(v)(1) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(w)(1) The advance payment or refund of earned income tax credit;

(x)(1) Payment made from the Agent Orange Settlement Fund;

(y)(1) Payment made from the Radiation Exposure Compensation Trust Fund;

(z)(1) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(aa)(1) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(bb)(1) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(cc)(1) A payment received from the National Tobacco Growers Settlement Trust;

(dd)(1) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;

(ee)(1) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(ff)(1) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg)(1) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 601-619;

(hh)(1) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) or

(jj) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5); or

(kk) Income or earnings from a program funded under the Work Investment Act (WIA) pursuant to 20 C.F.R. 652 and 660 to 671.

(6) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self employment.

(7) Best estimate.

(a) Gross income shall be computed by using a best estimate

of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall not be rounded at any step in the calculation;
2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by:

- a. Adding gross income from each pay period;
- b. Dividing by the total number of pay periods considered; and
- c. Converting the pay period figure to a monthly figure by multiplying a:

- (i) Weekly amount by (4.334),
- (ii) Biweekly amount by (2.667); or
- (iii) Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period; and

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Not rounding cents at any step in the calculation;
2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and
3. Averaging the amount of nonstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. Cents shall not be rounded at any step in the calculation;
2. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

3. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

4. Profit shall be determined by:

a. Dividing the allowable expenses permitted by the Internal Revenue Service except for depreciation by:

(i) Twelve (12) if the enterprise has been in operation for at least a year; or

(ii) The number of months the business has been operating if the business has been in existence for less than a year; and

b. Subtracting the monthly expense from the monthly income.

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be redetermined:

(a) [At least every] Twelve (12) months; or

(b) [At least every] Six (6) months for a child eligible pursuant to requirements in Section 5 of this administrative regulation.

(2) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(3) A nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

Section 9. Payment Rates and Policy. (1) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rates Chart.

(a) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(b) The maximum payment rates shall include the following categories:

1. Full day;
2. Part day;

3. Urban;
4. Nonurban;
5. Licensed;
6. Certified;
7. Registered;
8. Infant/Toddler;
9. Preschool child; and
10. School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education of Young Children;
2. National Early Childhood Program Accreditation;
3. National Association for Family Child Care; or
4. Council on Accreditation [National After-School Association];

or

5. Other accrediting body approved by the Early Childhood Development Authority or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for non-traditional care for providing child care assistance based on the parent's schedule between:

1. 7[6] p.m. to 5[6] a.m. daily; or
2. Friday, 7[6] p.m. through Monday, 5[6] a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:

(a) With a special need; or

(b) Who is [between] age thirteen (13), but under age [and] nineteen (19), and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or
2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

(a) Three (3) children receiving CCAP per day; or

(b) Six (6) children receiving CCAP per day, if those children are a part of a sibling group.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 10. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(3)(b) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:



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Family Co-Payment Per Day								
Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child	Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay	
			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more
0	899	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
900	999	\$2.00	\$2.00	\$3.00	\$2.00	\$2.00	\$2.00	\$2.00
1,000	1,099	\$3.00	\$3.00	\$3.00	\$2.00	\$3.00	\$2.00	\$3.00
1,100	1,199	\$4.00	\$4.00	\$4.00	\$3.00	\$3.00	\$2.00	\$3.00
1,200	1,299	\$4.00	\$4.00	\$5.00	\$4.00	\$4.00	\$3.00	\$3.00
1,300	1,399	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$3.00	\$4.00
1,400	1,499	\$6.00	\$5.00	\$6.00	\$5.00	\$6.00	\$4.00	\$4.00
1,500	1,599	\$7.00	\$6.00	\$6.00	\$6.00	\$6.00	\$5.00	\$5.00
1,600	1,699	\$8.00	\$6.00	\$7.00	\$6.00	\$7.00	\$6.00	\$6.00
1,700	1,799	\$9.00	\$7.00	\$8.00	\$7.00	\$8.00	\$6.00	\$7.00
1,800	1,899	\$10.00	\$8.00	\$9.00	\$7.00	\$8.00	\$7.00	\$8.00
1,900	1,999	\$10.00	\$9.00	\$10.00	\$8.00	\$9.00	\$8.00	\$9.00
2,000	2,099	\$11.00	\$10.00	\$11.00	\$8.00	\$9.00	\$8.00	\$9.00
2,100	2,199.99	\$12.00	\$10.00	\$11.00	\$9.00	\$10.00	\$9.00	\$10.00
2,200	2,299.99	\$12.00	\$11.00	\$12.00	\$10.00	\$11.00	\$9.00	\$10.00
2,300	2,399.99	\$12.00	\$12.00	\$13.00	\$11.00	\$12.00	\$9.00	\$10.00
2,400	2,499.99	\$12.00	\$12.00	\$13.00	\$12.00	\$13.00	\$10.00	\$11.00
2,500	2,599.99	\$12.00	\$13.00	\$14.00	\$12.00	\$13.00	\$10.00	\$11.00
2,600	2,699.99	\$12.00	\$13.00	\$14.00	\$13.00	\$14.00	\$12.00	\$13.00
2,700	2,799.99	\$12.00	\$13.00	\$14.00	\$13.00	\$14.00	\$13.00	\$14.00
2,800	2,899.99	\$12.00	\$13.00	\$14.00	\$14.00	\$15.00	\$14.00	\$15.00
2,900	2,999.99	\$12.00	\$13.00	\$14.00	\$14.00	\$15.00	\$16.00	\$17.00
3,000	3,099.99	\$12.00	\$13.00	\$14.00	\$15.00	\$16.00	\$18.00	\$19.00
3,100	3,199.99	\$12.00	\$13.00	\$14.00	\$15.00	\$16.00	\$20.00	\$21.00
3,200	3,299.99	\$12.00	\$13.00	\$14.00	\$15.00	\$16.00	\$20.00	\$21.00
3,300	3,399.99	\$12.00	\$13.00	\$14.00	\$15.00	\$16.00	\$22.00	\$23.00
3,400	3,499.99	\$12.00	\$13.00	\$14.00	\$15.00	\$16.00	\$22.00	\$23.00
3,500	3,599.99	\$12.00	\$13.00	\$14.00	\$15.00	\$16.00	\$24.00	\$25.00
3,600	3,699.99	\$12.00	\$13.00	\$14.00	\$15.00	\$16.00	\$25.00	\$25.00

(b)(a) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars. (b) The family copayment table shall be effective May 1, 2008.

(c) The co-payment for a child who was in the CCAP prior to May 1, 2008, shall remain unchanged until the next action involving the child's eligibility, including:

1. A change in the circumstances of the child or the child's family; or
2. An eligibility redetermination of the child and the child's family.

(4)(a) If a provider notifies the cabinet or its designee that a family has failed to comply with a required copayment for two (2) weeks, the cabinet or its designee shall request that the provider develop a payment plan with the family.

(b) If a provider notifies the cabinet or its designee that a family fails to enter into a payment plan within ten (10) days from a provider's notification that a payment plan is necessary, or a family fails to make two (2) payments in accordance with the payment plan, the cabinet shall:

1. Not pay a subsequent provider until the family demonstrates compliance with the payment plan; and
2. Terminate CCAP for the family.

(c) The cabinet or its designee may grant an exception to paragraph (b) of this subsection due to:

1. A disaster verified by utility provider, local, state, or federal government;
2. The closure of a provider;
3. Family circumstances, such as relocation, illness, or death;
4. A risk to the health, welfare, or safety of the child or parent.

or

Section 11. Family Rights and Responsibilities. (1) The family

of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

- (a) Be offered choice of child care assistance subject to the availability of state and federal funds; and
- (b) Receive a child care certificate, the DCC-94, Child Care Service Agreement and Certificate.

(3) An applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the DCC-91 and the DCC-94.

(4) An applicant approved in accordance with Section 5 or 6 of this administrative regulation shall sign and return the DCC-91.

(5) Notification of action.

(a) A DCC-105 shall serve many purposes in the administration of CCAP, including notice to an applicant or recipient of:

1. Changes in:
  - a. Copayment;
  - b. Certification period; or
  - c. Household size;
2. Approval of:
  - a. Application; or
  - b. Continued eligibility; or
3. Adverse action, including:
  - a. Denial of application;
  - b. Reduction of CCAP benefits;
  - c. Termination of CCAP benefits.

(b) The DCC-105 providing notice of an adverse action shall include:

1. Reason for the adverse action;

2. Citation from an applicable state administrative regulation; and

3. Information regarding the:

a. Informal dispute resolution process in accordance with Section 17 of this administrative regulation; and

b. Opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation.

(c) The language on the DCC-105 shall differ according to the purpose of the notice described in paragraphs (a) and (b) of this subsection.

(6) An applicant may change the applicant's provider a maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to:

(a) A disaster verified by utility provider, local, state, or federal government;

(b) Closure of a provider;

(c) Family circumstances, such as relocation, illness, or death;

or

(d) A risk to the health, welfare, or safety of the child or the applicant.

(7)(4) A family that changes the child care provider more than three (3) times as described in subsection (6)(3) of this section shall be discontinued from the CCAP and unable to participate until the end of the eligibility period in effect at the time of discontinuance.

(8)(5) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(9)(6) Failure to report a change in a circumstance may result in a decrease or discontinuance of CCAP benefits based on the type of change.

Section 12. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:090, Child care center licensure;

(b) 922 KAR 2:100, Certification of family child care homes;

(c) 922 KAR 2:110, Child care facility provider requirements;

(d) 922 KAR 2:120, Child care facility health and safety standards; and

(e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program.

(4) If CCAP benefits are reduced or terminated due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(5) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(6) The cabinet shall send a DCC-105 providing notice of adverse action in accordance with Section 11(5) of this administrative regulation, ten (10) calendar days in advance of this adverse action.

(7) The recipient shall be given ten (10) calendar days advance notice of the proposed action if a change in circumstances indicates:

(a) A child care benefit shall be:

1- Reduced;

2- Suspended; or

3- Discontinued; or

(b) An individual shall be removed from the child care benefit.

(7) The ten (10) calendar days advance notice of the proposed action shall:

(a) Be given on the DCC-105, Notice of Adverse Action;

(b) Explain the reason for the proposed action;

(c) Cite the applicable state administrative regulation; and

(d) Extend the opportunity to confer with the child care worker or to request an appeal pursuant to Section 17 of this administrative regulation.

(8) The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective [services] or preventive services authorization;

(b) A child with a special need;

(c) K-TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

(d) Teen parents attending high school or pursuing a general equivalency degree (GED);

(e) A K-TAP recipient attempting to transition off assistance through employment.

(f) A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(g) A low income working parent; or

(h) A parent in education or training programs leading to self-sufficiency [A teen parent;

(d) A K-TAP recipient attempting through employment to transition off assistance;

(e) An applicant whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment; or

(f) A low income working applicant.]

Section 13. Provider Requirements. (1) A licensed, certified, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and submit the DCC-94 to the cabinet or its designee prior to receiving payment from the CCAP;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee; and

(c) Maintain a [monthly] sign-in sheet in which the daily arrival and departure times of each child have been recorded on a daily basis, and submit the sign-in sheet upon request of the cabinet or its designee; and

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:090, Child care center licensure;

2. 922 KAR 2:100, Certification of family child care homes;

3. 922 KAR 2:110, Child care facility provider requirements;

4. 922 KAR 2:120, Child care facility health and safety standards; and

5. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program.

(2) A licensed or certified child care provider shall complete the DCC-94B, Licensed or Certified Provider Information Form, prior to receiving payment from the CCAP.

(3) A registered child care provider shall complete all requirements of 922 KAR 2:180 prior to receiving payment from the CCAP.

(4) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

Section 14. Other Services. To the extent state funds are available, a child whose family's income is over the income limits for the CCAP described in Section 7 may[shall] be eligible for:

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

(6) Other items relating to child care services with prior approval of the cabinet.

Section 15. An improper payment, claim, or penalty in CCAP shall be in accordance with 922 KAR 2:020, Erroneous Payments.

(1) The cabinet or its designee shall investigate each:

(a) Instance of apparent erroneous payment; and

(b) Allegation of fraud related to a:

1. CCAP recipient family; or
2. Child care provider.

(2) Action shall be promptly taken to correct the payment in an active case.

(3) If an overpayment has occurred, the cabinet or its designee shall:

- (a) Determine the amount of the erroneous payment; and
- (b) Establish a claim to recover the amount of the overpayment.

(4) If an overpayment has occurred and fraud is suspected, the cabinet shall determine the efficacy of pursuing a judicial remedy prior to attempting to recover the amount of the overpayment through an administrative process.

(5) If a claim has been established, and a judicial remedy has been determined by the cabinet to be inappropriate, the cabinet or its designee shall:

- (a) Advise the affected party of the claim; and
- (b) Establish a repayment agreement using form DCC-98, Repayment Agreement, for the purpose of recovering a CCAP overpayment from the:

1. Applicant; or
2. Child care provider.

(6) Payments under the CCAP shall be discontinued if a family or provider:

- (a) Refuses to sign a DCC-98; or
- (b) Defaults on more than three (3) payments under a completed repayment agreement.

(7) If a family or provider reapplies for CCAP benefits after discontinuance from the program for noncompliance with a repayment agreement, as described in subsection (6) of this section, the cabinet or its designee shall reapprove CCAP benefits upon payment of the overdue installments.

(8) If a family or provider reapplies for CCAP benefits after discontinuance from the program for refusal to sign a DCC-98 as described in subsection (6) of this section, the cabinet or its designee shall reapprove CCAP benefits upon signing of the DCC-98 and payment of the overdue installments.

(9) If an underpayment has occurred, the cabinet or its designee shall:

- (a) Determine the amount owed; and
- (b) Issue a refund to the affected party.

(10) If both an overpayment and an underpayment exists for an individual family or provider, the overpayment and underpayment shall be offset one against the other.]

Section 16. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the [extended] family;
2. An illness of the:
  - a. Child; or
  - b. Applicant; or
3. A [Court order]; or
4. Disaster verified by utility provider, local, state, or federal government;]

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

- (c) Not be made to a registered provider for any absences;
- (d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 10(4) of this administrative regulation or 922 KAR 2:020;

1. Defaults on three (3) payments under a repayment agreement with the cabinet or its designee; or
2. Refuses to sign a DCC-98; or]

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service; and

(h) Not be made to a licensed or certified provider for more

than ten (10) holidays per calendar year.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 12(8) of this administrative regulation.

Section 17. Informal Dispute Resolution and Appeals. (1) An applicant for CCAP or a parent of a child receiving CCAP:

(a) May seek an informal dispute resolution if the applicant or parent is dissatisfied with an action by the cabinet or its designee concerning a denial, reduction, or termination of CCAP benefits;

(b) Shall request an informal dispute resolution with the cabinet or its designee within ten (10) days of the:

1. Notice of denial for CCAP in accordance with Section 2(5) of this administrative regulation; or

2. Date of the adverse action for which notice is provided in accordance with Section 12(6) of this administrative regulation; and

(c) Who is dissatisfied with the decision of the informal dispute resolution, may submit an administrative hearing request:

1. In accordance with Section 18 of this administrative regulation; and

2. Within thirty (30) calendar days of the date of the decision made by the cabinet or its designee in accordance with subsection (3) of this section.

(2)(a) If the child's parent provides notice within ten (10) calendar days from the date of adverse action in accordance with 45 C.F.R. 205.10(a)(6), a child receiving CCAP may continue to receive CCAP during the informal dispute resolution or administrative hearing process pending the outcome of the informal dispute resolution or the administrative hearing.

(b) If an informal dispute resolution or administrative hearing process upholds the denial, reduction, or termination of CCAP, the child's parent who continued to receive CCAP benefits during the informal dispute resolution or administrative hearing process shall repay the CCAP back to the effective date of the denial, reduction, or termination.

(3) Upon receipt of a request for the informal dispute resolution, the cabinet or its designee shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within ten (10) days, unless:

1. The commissioner or designee grants an extension to the timeframe specified in this paragraph due to extenuating circumstances that prolong the review of the request; and

2. Notice of the extension is provided to the applicant or parent who made the request for informal dispute resolution.

(4) An applicant for CCAP or a parent of a child receiving CCAP may request an administrative hearing in accordance with Section 18 of this administrative regulation at any time during the informal dispute resolution process established in this section.

Section 18. Administrative Hearings. An administrative hearing may be requested in accordance with 922 KAR 1:320.

Section 19 [Appeals. The cabinet or its designee shall inform a family that:

(1) Appeal of a denial, reduction, suspension, or termination of benefits shall be submitted in writing to the cabinet or its designee within thirty (30) calendar days of the date of the negative action.

(2) If a family appeals a:

(a) Reduction of benefits, child care assistance benefits shall be available at the reduced level during the appeal; or

(b) Suspension or termination of benefits, child care assistance benefits shall not be available during the appeal.

Section 18.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Application for Subsidized Child Care Assistance", edition 11/09[3/08];

(b) "DCC-90.1, Intent to Apply for Child Care Assistance", edition 11/09[3/08].

(c) (c) "DCC-91, Client Rights and Responsibilities Sheet", edition 11/09;

(d) "DCC-94, Child Care Service Agreement and Certificate",

edition 11/09[3/08];

(e)(4) "DCC-94B, Licensed or Certified Provider Information Form", edition 11/09[3/08];

(f)(e) "DCC-97, Provider Billing Form", edition 11/09[3/08];

(f) "DCC-98, Repayment Agreement", edition 3/08;

(g) "DCC-105, Child Care Assessment Program Notice of [Adverse] Action", edition 11/09[3/08], and

(h) "DCC-300, Kentucky Child Care Maximum Payment Rates Chart", edition 11/09[3/08].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 am through 4 30 pm.

PATRICIA WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: November 9, 2009

FILED WITH LRC: November 9, 2009 at 11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on December 21, 2009, at 9 a.m. in the Health Services Board Room, Health Services Building, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2009, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 4, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Deanger, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the Cabinet to qualify for federal funds under the Child Care Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of the Child Care Assistance Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A 050(1) requires the Secretary of the cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for proper administration of the cabinet and its programs KRS 199.892 enables the cabinet to qualify to receive federal funds under provisions of the Federal Social Security Act and provide effective regulation of child care centers KRS 199.8994 requires the Cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. This administrative regulation conforms to the authorized statutes by allowing the Cabinet to qualify for federal funds and establishes procedures for the implementation of the Child Care Assistance Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of all child care funds in a manner which is consistent with federal requirements

and the best interest of the clients to be served.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation includes: Revisions to definitions to add clarity; Clarification and consolidation of forms used to provide adequate notice and program information to parents and providers; Improved alignment of prioritization and criteria for various eligibility categories with applicable federal requirements and the state plan for CCDF, though the types of categories overall remain unchanged; Addition of an informal dispute resolution process and administrative hearing rights for parents; Removal of the section concerning erroneous payments due to the newly proposed administrative regulation, 922 KAR 2.020, governing improper payments, claims, and penalties under CCAP; Inclusion of the child's income, excluding Kentucky Transitional Assistance Program (K-TAP) benefits, in the calculation of the household's income for eligibility determination and exclusion of income and earnings under programs funded by the Workforce Investment Act to provide consistency with other benefit programs administered by the Department for Community Based Services; Modification of the co-payment chart to ensure congruency with the CCAP data/payment system; Clarification of instances that trigger discontinuation or denial of a CCAP payment to limit covered absences per month and holidays per year and enforce compliance with parental co-payments and 920 KAR 2:020; New provision to allow receipt of CCAP by an unemployed parent for up to four weeks, or a parent on maternity leave or subject to a health condition impacting employment for up to six weeks; Change to the timeframes during which a child care provider will be paid an enhanced rate for nontraditional hours to reflect actual non-traditional hours and clarify the time is based on the parent's schedule; Provision to allow discontinued K-TAP families within income less than 165% of the federal poverty level to continue receipt of CCAP for twelve months; Clarification that co-payments may be waived for families due to child protective services and verification requirements for a child to receive CCAP beyond age thirteen; and Technical corrections to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure compliance with federal and state requirements governing CCDF, greater consistency across departmental programs, and congruency with technology systems and other administrative regulations concurrently in process. In addition, the amendment provides for greater due process and notice to parents and providers, enhances clarity; and affords parents who are unemployed, on maternity, subject to a health condition, or discontinued from K-TAP temporary relief with continued benefits under CCAP.

(c) How the amendment conforms to the content of the authorizing statutes. The amendment conforms to the content of the authorizing statutes by ensuring Kentucky's continued compliance with federal and state statutory requirements and provides for the proper administration of the child care funds through the establishment of procedures for child care assistance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes through its clarification of revised policy concerning definitions, technical eligibility, income eligibility, requirements for low income family eligibility determination and informal dispute resolutions and appeals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Both beneficiaries of CCAP and child care providers will be impacted by this administrative regulation. There are approximately 42,000 children served by CCAP on a daily basis. There are approximately 2,412 licensed child care centers, 778 certified child care centers, and 2,042 registered child care providers in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation clarifies application requirements, eligibility categories, nontraditional hours, covered absences and holidays, use of forms, and notice of agency actions; and adds informal dispute resolution and administrative hearing rights for parents of children receiving CCAP. In addition, the amendment provides temporary relief through continued CCAP to parents who are unemployed, on maternity leave, subject to a health condition, and discontinued from K-TAP.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated new cost to entities described in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to the entities described in question (3) include enhanced clarity and understanding of the entities' and cabinet's rights and responsibilities, child safety, improved notice, informal resolution and due process opportunities; and (temporary) relief due to unemployment, health condition, or discontinuation from K-TAP.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This amendment is cost neutral. There are no new costs anticipated. At present, no new administrative hearing officer is necessary to extend administrative hearing rights to CCAP recipients. The administrative policy has been updated to reflect (temporary) relief due to unemployment, health condition, or discontinuation from K-TAP currently in practice.

(b) On a continuing basis: This amendment is cost neutral. There are no new costs anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation will be federal Child Care and Development Fund Block Grant.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not necessary to change this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented statewide; however, tiering is applied to distinguish urban from non-urban counties. Child Care providers in urban counties receive a higher rate of child care assistance, due to the fact that those providers experience higher overhead costs. Those rate differentiations are further supported by the analysis of the market rate survey results specified in KRS 199.899.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98

2. State compliance standards. KRS 194A.050, 199.892, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619, 45 C.F.R. 98.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This question is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.8994, 42 U.S.C. 601-619, 45 C.F.R. 98

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Though this administrative regulation supports compliance with federal and state requirements, there is no anticipated generation of new revenues for state or local government in its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Though this administrative regulation supports compliance with federal and state requirements, there is no anticipated generation of new revenues for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will be cost neutral for its first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will be cost neutral for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, NOVEMBER 13, 2009

EDUCATION PROFESSIONAL STANDARDS BOARD  
(New Administrative Regulation)

**16 KAR 2:200. Probationary endorsement for teachers for English as a second language.**

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation approved by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of English as a second language.

Section 1. Definitions. (1) "Qualified teacher" means a teacher who holds the appropriate certification as a teacher for English as a second language unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

(2) "Teacher for English as a second language" means a teacher who works:

- (a) Directly with identified English as a second language pupils, in addition to the regularly assigned classroom teacher; or
- (b) In a classroom made up only of properly identified English as a second language students.

Section 2. (1) If a qualified teacher is not available for the position of teacher for English as a second language as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request by filing a Form TC-EL with the Education Professional Standards Board a probationary endorsement for teaching English as a second language for a teacher who:

- (a) Has a bachelor's degree;
- (b) Has a valid Kentucky teaching certificate;
- (c) Has completed at least one (1) year of successful teaching experience;
- (d) Has been admitted to the preparation program for the endorsement for teachers for English as a second language; and
- (e) Is currently enrolled in graduate studies related to the education profession.

(2) The request for the probationary endorsement shall be submitted on Form TC-EL to the Education Professional Standards Board for each teacher for English as a second language requiring the probationary endorsement.

(3)(a) The probationary endorsement for teachers for English as a second language shall be valid for a period of two (2) years from the initial request.

(b) A teacher receiving this probationary endorsement shall complete the required curriculum for recommendation for the endorsement for teacher for English as a second language within the two (2) year validity of the probationary endorsement.

(c) The probationary endorsement shall not be renewed.

Section 3. Incorporation by Reference. (1) Form TC-EL, 10/2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: October 19, 2009

FILED WITH LRC: November 6, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 30, 2009 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, Frankfort, Kentucky 40601. Individuals interested in

being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications and procedures for obtaining a probationary endorsement for teachers for English as second language.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to give school districts assistance in filling positions for teachers for English as second language which is a teacher shortage area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation approved by the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the qualifications for applying and receiving a probationary endorsement for teachers for English as a second language.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not Applicable.

(b) The necessity of the amendment to this administrative regulation: Not Applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not Applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not Applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, educators, and students.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts and students will not have to take any action to comply with this amendment. Educators who wish to pursue the probationary endorsement for Teachers for English as a Second Language will have to follow the procedures outlined in this administrative regulation and complete an approved educator preparation program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs associated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): School districts will benefit from

the potential increase in available faculty in this shortage area. Students will benefit from the increase in available qualified staff. Educators will benefit from the ability to add a certification endorsement while teaching in the field.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs.

(b) On a continuing basis. No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This does not establish or increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, all educators and school districts shall be treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board and school districts.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRAS 161.020, 161.028, and 161.030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This is not a revenue generating regulation, and therefore no revenue shall be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This is not a revenue generating regulation, and therefore no revenue shall be generated.

(c) How much will it cost to administer this program for the first year? There shall be no additional cost to any government entity.

(d) How much will it cost to administer this program for subsequent years? There shall be no additional cost to any government entity.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: This regulation simply outlines the procedures for applying and obtaining a probationary endorsement, therefore it should not have any fiscal impact other than giving school districts additional options when locating a certified teacher for a classroom

#### FINANCE AND ADMINISTRATION CABINET Department of Revenue Office of Property Valuation (New Administrative Regulation)

103 KAR 5:180. Procedures for Sale of Certificates of Delinquency by County Clerks.

RELATES TO KRS 134.128

STATUTORY AUTHORITY: KRS 134.128(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.128(2) requires the Department of Revenue to promulgate administrative regulations to establish a process for the purchase and sale of certificates of delinquency to third parties. In compliance with this subsection, this new administrative regulation establishes a statewide schedule for the sale of certificates, prohibits payment of certificates by a third party prior to the sales, prohibits payment of certificates known to be involved in litigation or for which a payment agreement has been agreed to, establishes a process for determining the order in which third-parties select certificates for purchase, requires prior registration with the county clerk, requires review of the qualifications of the registered purchasers by the county clerk or the Department of Revenue, establishes deposit requirements for purchaser, establishes a registration fee for purchasers, and establishes payment methods and requirements.

Section 1. Definitions. (1) "Clerks fees" means any fee required to be collected by a County Clerk for the filing, recording, release, processing, or other handling of a certificate of delinquency or a lien created by a certificate of delinquency.

(2) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, twenty-five (25) percent or more of a class of voting securities or voting interests of a registrant or applicant, or a person in control of a registrant or applicant,

(b) The power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a registrant or applicant;

(c) The power to exercise influence, directly or indirectly, over the management or policies of a registrant or applicant;

(d) Holding the position of an officer, director, general partner, or managing member of the registrant or the applicant or in a position of similar status or performing similar duties and functions of the registrant or the applicant; or

(e) Being entitled to receive twenty-five (25) percent or more of the profits from the registrant or applicant.

(3) "Current certificate of delinquency" means a certificate of delinquency which relates to the most recent tax year and which has not been offered in a prior year's county clerk's sale.

(4) "Department" means the Kentucky Department of Revenue.

(5) "Person" means any individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government and any subdivision, agency or instrumentality thereof, or any other legal or commercial entity.

(6) "Priority Certificate of Delinquency" means a current certificate of delinquency which relates to a property on which a potential purchaser already owns a prior year certificate of delinquency.

(7) "Protected Certificate of Delinquency" means a certificate of delinquency which is:

(a) Currently involved in litigation;

(b) Part of an ongoing bankruptcy proceeding of which the County Clerk has received actual notice; or

(c) The subject of an agreed payment plan in good standing.

(8) "Related entities" and "related interests" means a relationship between two persons in which a person:

(a) Can exercise control or significant influence over another person;

(b) Is related by blood, adoption, or marriage to another person,

(c) Controls or is controlled by another person; or

(d) Is an agent or affiliate of another person.

(9) "Sale" means the annual bulk sale by the county clerk of certificates of delinquency to third party purchasers.

Section 2. Establishing Sale Date (1) The Department of Revenue shall develop a preliminary statewide schedule for certificate of delinquency sales and shall notify each county clerk on or before May 1 of each year of the proposed date of the county's sale. A county clerk may, within five (5) business days of notification of the preliminary schedule, make a written request to the department to change the proposed sale date for his or her county. Date changes shall be made solely in the discretion of the department. Any ad-



justments shall be made after consultation with the county clerk and shall be completed on or before May 15 of the/that same year. The department shall publish the final sale schedule as soon as practicable after May 15 of each year.

(2) The county clerk shall notify the county attorney of the sale date as soon as practicable after May 15 of each year. No later than ten (10) days prior to the sale date the county attorney shall provide the county clerk a list of all protected certificates of delinquency. No certificate of delinquency included on the protected list shall be sold at the county clerk's sale.

(3) Except as provided in KRS 134.127, the county clerk shall not assign any current certificate of delinquency prior to the sale.

**Section 3. Purchaser's Registration with the County Clerk.** (1) A third party purchaser shall register with the county clerk prior to participating in the county's sale. A new registration shall be required for each year's sale.

(2) The county clerk shall establish a registration deadline at least ten (10) but no more than twenty-one (21) days prior to the county's sale. The registration deadline shall be included in all advertisements required by KRS 134.128(5).

(3) A third party purchaser's registration shall include:

(a) The purchaser's name, physical address, mailing address and phone number;

(b) The purchaser's DOR registration number as required by 103 KAR 5.190; and

(c) A list of the priority certificates of delinquency the purchaser intends to purchase. This list shall be clearly marked and shall include the total amount due for all priority certificates of delinquency listed and the following information for each priority certificate of delinquency listed:

1. The current year's tax bill number;
2. The taxpayer name;
3. The amount due on the current certificate of delinquency;
4. The prior year certificate of delinquency's tax bill number;
5. The prior year certificate of delinquency's tax year;
6. The book and page numbers where the prior year certificate of delinquency is filed, if applicable;
7. The account or parcel identification number if the county uses such a number to identify specific properties; and
8. If requested by the county clerk, a copy of the prior year certificate of delinquency.

(d) A list of the current certificates of delinquency the purchaser intends to purchase. This list shall be clearly marked and shall include the total amount due for all certificates of delinquency listed and the following information for each certificate of delinquency listed:

1. The taxpayer name,
2. The amount due on the certificate of delinquency;
3. Lists shall be provided in the format and order required by the county clerk.

(e) the following sworn statement, "I hereby certify that I am not participating in this sale in conjunction with any related person or related entity to obtain any advantage over other potential purchasers at the sale."

(f) the deposit required by the clerk pursuant to Section 4 of this administrative regulation; and

(g) Payment of the registration fee of five (5) dollars for each certificate of delinquency included on the purchaser's list of priority certificates of delinquency and ten (10) dollars for each certificate of delinquency included on the purchaser's list of current certificates of delinquency. The total registration fee shall not exceed \$250.

(4) Prior to the sale, the county clerk shall

(a) Review each registration and confirm that each registrant has complied with KRS 134.129 and that no related entities or related interests are participating or attempting to participate in the sale in a manner designed to subvert the fairness of the sale or to deprive other participants from an equitable opportunity to purchase certificates of delinquency at the sale. If the clerk determines that a purchaser has violated or has attempted to violate this section, the clerk shall notify the county attorney and the Department of Revenue of the violation or attempted violation;

(b) Review all the lists of priority certificates of delinquency for

purchase submitted by purchasers to verify that the registrant has a priority right to purchase the listed certificates of delinquency; and

(c) Review the submitted priority purchase lists to identify multiple purchasers interested in the certificates of delinquency on the same property and, based upon the information submitted, determine the registrant that holds the prior year claim for the most recent tax year.

**Section 4. Deposit Requirement.** (1) A purchaser shall deposit funds with the County Clerk at the time of registration in the following amounts:

(a) 100% of the value of each certificate of delinquency included on the purchaser's list of priority certificates of delinquency;

(b) All clerk's fees associated with each certificate of delinquency included on the purchaser's list of priority certificates of delinquency;

(c) An amount determined by the county clerk, not to exceed twenty-five (25) percent of the value of each certificate of delinquency included on the purchaser's list of current certificates of delinquency. A purchaser shall not be required to pay an additional deposit if the certificate of delinquency is included on both lists, and if both lists clearly indicate that the certificate is included on both lists. A purchaser may deposit more than the minimum amount required by the county clerk.

(2) The county clerk may apply the deposit to payment of any certificate of delinquency purchased at the sale.

(3) The county clerk shall refund any unused portion of the deposit to the purchaser as soon as practicable after the completion of the sale.

(4) Payment of the deposit shall be made in a form acceptable to the county clerk.

**Section 5. Payment.** (1) Payment of any outstanding balance, after application of all deposits, shall be made at a time determined by the county clerk, but no later than ten (10) business days after the sale. The total amount due shall include all clerk's fees for all certificates of delinquency purchased at the sale.

(2) Payment shall be made in a form acceptable to the county clerk. The county clerk shall include a list of the acceptable forms of payment in all advertisements for the sale.

(3) If full payment is not made for the certificates of delinquency at the time designated by the county clerk, the county clerk shall not assign any certificate of delinquency for which full payment has not been received and such certificates of delinquency shall be available for payment pursuant to KRS 134.127(1)(b). The county clerk shall have discretion as to how to allocate partial payments, if the purchaser's failure to make payment results in additional cost or expense to the county clerk, the clerk may forfeit the purchaser's deposit to cover those additional costs and expenses.

**Section 6. Conduct of the Sale.** (1) The county clerk may sell the requested priority certificates of delinquency to the purchasers who submitted a list prior to the sale at the beginning of the sale, or as soon as practicable after the sale. The purchaser holding a certificate of delinquency from the most recent tax year shall have priority. If a purchaser holding a certificate of delinquency from the most recent tax year declines to purchase the priority certificate of delinquency, the purchaser holding a prior certificate of delinquency from the next most recent year shall be allowed to purchase the certificate of delinquency if included on their list of priority certificates of delinquency.

(2) The remaining certificates of delinquency shall be sold in lots. The order of selection of lots by registered purchasers shall be determined by a random drawing on the day of the sale. The purchaser who draws the lowest number during the random drawing shall have the first turn to choose a lot for purchase. Thereafter, purchasers shall select lots to purchase in order based on the random drawing from lowest to highest. Purchasers who are not present for the random drawing shall be placed at the bottom of the selection list behind the purchasers who were present for the random drawing.

(3) The remaining certificates of delinquency shall be sold in lot sizes as follows:

(a) In counties with 500 or fewer certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of up to five (5);

(b) In counties with more than 500 and less than 1,000 certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of up to ten (10);

(c) In counties with at least 1,000 and not more than 2,500 certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of up to twenty-five (25);

(d) In counties with at least 2,500 and not more than 7,500 certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of up to fifty (50);

(e) In counties with more than 7,500 certificates of delinquency to be sold, the certificates of delinquency may be sold in lots of no more than fifty (50) for the first four (4) rounds, and, for all subsequent rounds, may be sold in lots not to exceed two (2) percent of the total number of current certificates of delinquency included in the pool for the sale;

(f) Notwithstanding the lot sizes established by paragraphs (a) through (e) of this subsection, if, for any round of a sale, there are more certificates of delinquency to be sold than purchasers participating in the sale, the lot size used for that round shall not create fewer lots than the number of purchasers participating

(5) The county clerk may set a reasonable time limit for purchasers to make their selections.

(6) A purchaser may withdraw from the sale at any time prior to completion of the sale. If a purchaser withdraws from the sale, he or she may not make any further purchases in any later round of the sale. No other purchaser may take the place of the withdrawing purchaser.

(7) A purchaser may purchase less than a full lot of certificates of delinquency. If a purchaser purchases less than a full lot, the purchaser shall be considered to have withdrawn from the sale after the partial lot purchase.

(8) The county clerk shall apply the purchaser's deposit to the total amount due for the certificates of delinquency purchased. The purchaser shall pay any additional funds required on or before the payment deadline established by the county clerk pursuant to Section 4 of this administrative regulation. The total amount due shall include all clerk's fees for all certificates of delinquency purchased at the sale. Any amount of deposit remaining after the sale shall be refunded to the purchaser.

(9) Purchasers shall only purchase those certificates of delinquency listed on the registration required by Section 3 of this administrative regulation.

(10) Any questions or controversies relating to the sale shall be addressed by the county clerk.

Section 7. Department of Revenue Oversight. (1) The Commissioner of the Department of Revenue or his or her duly appointed representative shall have access to all sales and shall be permitted to review or audit any and all records relating to the sale of certificates of delinquency.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2009, at 11 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes the requirements and procedures for the bulk sale of certificates of delinquency to third party purchasers by the county clerks. It sets scheduling, registration, deposit and payment requirements for participants in the sale and sets the procedures to be used during the sale.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures to be used by county clerks for the sale of certificates of delinquency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 134.128(2) requires the Department of Revenue to promulgate administrative regulations to establish procedures for these sales and standards for registration, deposits, payment, scheduling and conduct of the sales.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide county clerks the necessary standards and procedures to conduct these sales.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Not applicable

(a) How the amendment will change this existing administrative regulation.

(b) The necessity of the amendment to this regulation:

(c) How the amendment conforms to the content of the authorizing statute:

(d) How the amendment will assist in the effective administration of the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all 120 county clerks and all 120 county attorneys. In addition, it will affect all off the third-party purchasers who purchase certificates of delinquency.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: These sales are currently conducted by sheriffs. HB 262 shifted the duty to conduct these sales to the county clerks. This administrative regulation sets the specific procedures and standards for the clerks to implement as required by KRS 134.128(2). KRS 124.128(2) requires county attorneys to provide information regarding "protected" certificates of delinquency to county clerks. This administrative regulation sets the deadline before which the county attorneys must provide this information to the county clerks. Finally, this administrative regulation sets the registration, registration fee, deposit and payment requirements which apply to participants in these sales.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). County clerks: unknown. County attorneys: minimal cost to identify certificates of delinquency involved in litigation or in payment agreements. Participants: Registration fee of \$250 per county.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each will benefit from a fair and equitable process for sale of certificates designed to insure that all participants have an equal chance to purchase certificates.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Minimal

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Regis-

tration fees set in the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: A registration fee of \$250 per county.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes an registration fee of \$250 per county.

(9) TIERING. Is tiering applied? Tiering is applied. Holders of prior certificates of delinquency are give priority to purchase later certificates on the same property. This is necessary to protect the holder of the certificates and to prevent the property holder from having to contact and pay multiple certificate-holders.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue, all county clerks, and all county attorneys will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 134.128(2)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Specific dollar amounts cannot be determined for the increase in receipts that will be generated because of this administrative regulation, but the registration fees for the sales should generate sufficient revenue to offset the cost of holding the sales.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Specific dollar amounts cannot be determined, however, the impact should be substantially similar to that experienced in the first year.

(c) How much will it cost to administer this program for the first year? There will be an additional cost to the county clerks to hold these sales; however, it is anticipated that these costs will be offset by the registration fees to be paid by the participants.

(d) How much will it cost to administer this program for subsequent years? There will be an additional cost to the county clerks to hold these sales, however, it is anticipated that these costs will be offset by the registration fees to be paid by the participants.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### FINANCE AND ADMINISTRATION CABINET Department of Revenue Office of Property Valuation (New Administrative Regulation)

103 KAR 5:190. State registration requirements and application process for purchasing certificates of delinquency; fees; and definitions for related entities and related interests.

RELATES TO KRS 134.128, 134.129

STATUTORY AUTHORITY: KRS 134.129(3), 134.128(2)(d)3

NECESSITY, FUNCTION, AND CONFORMITY. KRS

134.129(2) requires a person to hold a certificate of registration from the Department of Revenue prior to the payment of any certificate of delinquency that results in the person owning more than

five (5) certificates of delinquency statewide, more than three (3) certificates of delinquency in any county, or investing more than \$10,000 in the payment of certificates of delinquency statewide in a calendar year. KRS 134.129(3) authorizes the Department of Revenue to promulgate administrative regulations to establish registration requirements, an application process, and an imposition of an administrative fee to offset the cost of processing and reviewing the application for a certificate of registration. KRS 134.128(2)(d)3 requires the department to define "related entities" and "related interests" for the purpose of regulating the sale of certificates of delinquency. This administrative regulation establishes the registration requirements and application process for persons to hold a certificate of registration prior to the payment of a certificate of delinquency. This administrative regulation establishes the administrative fee that may be charged to offset the cost of processing and reviewing the application for certificate of registration. This administrative regulation also defines "related entities" and "related interests".

Section 1. Definitions. (1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries controls, is controlled by, or is under the common control with, another person

(2) "Agent" means a person by agreement with a registrant to act on behalf of a registrant.

(3) "Applicant" means a person filing a complete application.

(4) "Application" means an Application for Certificate of Registration to Purchase Certificates of Delinquency, Form number 62A370A.

(5) "Commissioner" means the Commissioner of the Department, or his or her designee.

(6) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, twenty-five (25) percent or more of a class of voting securities or voting interests of a registrant or applicant, or person in control of a registrant or applicant;

(b) The power to elect a majority of executive officers, managers, directors, trustees, or other person exercising managerial authority of a registrant or applicant;

(c) The power to exercise influence, directly or indirectly, over the management or policies of a registrant or applicant;

(d) Holding the position of an officer, director, general partner, or managing member of the registrant or the applicant or in a position of similar status or performing similar duties and functions of the registrant or the applicant; or

(e) Being entitled to receive twenty-five (25) percent or more of the profits from the registrant or applicant.

(7) "Department" means the Kentucky Department of Revenue.

(8) "Person" means any individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government and any subdivision, agency or instrumentality thereof, and any other legal or commercial entity.

(10) "Registrant" means a person registered to purchase a certificate of delinquency.

(11) "Related entities" and "Related interests" means a relationship between two persons in which a person.

(a) Can exercise control or significant influence over another person;

(b) Is related by blood, adoption, or marriage to another person;

(c) Controls or is controlled by another person; or

(d) Is an agent or affiliate of another person.

Section 2. Registration Requirement. (1) All persons who purchase or intend to purchase any certificate of delinquency that results in the person owning more than five (5) certificates of delinquency statewide, more than three (3) certificates of delinquency in any county, or investing more than \$10,000 in the payment of certificate of delinquency statewide in a calendar year, shall file an application with the department, at least sixty (60) days prior to the purchase of any certificate of delinquency that would require registration under KRS 134.129 and this administrative regulation. The

application shall be notanized.

(2) In addition to the requirements established by KRS 134.129(4), which will be considered by the department in reviewing and evaluating an application, the department shall consider the following criteria and information in its review and evaluation

(a) Whether the person is a related entity or has related interests with another person that is registered or intends to register with the department;

(b) Whether persons with related interests or related entities to the applicant meet the criteria established by KRS 134.129(4) and this administrative regulation;

(c) If the applicant is not an individual, whether the applicant is in good standing in the state of incorporation or formation;

(d) If required by law to register to conduct business in the Commonwealth, whether the applicant is in good standing with the Kentucky Secretary of State.

(3) The department may consider additional criteria and request additional information from an applicant as part of the review process.

(4) The commissioner may waive any requirement of the application or permit an applicant to submit substituted information in lieu of the information required by this section or application.

(5) Every nonindividual applicant, at the time of the filing of the application and after a certificate of registration is issued, shall be in good standing in the state of its incorporation or formation.

(6) Every applicant shall, at the time of the filing of the application and after a certificate of registration is issued, shall be registered and qualified to do business in this Commonwealth, and be in good standing with the Kentucky Secretary of State

Section 3. Review of Application. (1) The department may review and investigate any matter related to an application to determine if the applicant meets the requirements of KRS 134.129 and this administrative regulation;

(2) The department shall approve an application and issue a certificate of registration to an applicant if he, she, or it meets the requirements of KRS 134.129 and this administrative regulation.

(3) The department may deny the application and refuse to issue a certificate of registration if the applicant does not meet one or more of the requirements as set forth in KRS 134.129 and this administrative regulation.

(4) All certificates of registration shall expire on December 31 in the calendar year in which they are issued regardless of the date of issuance

(5) A certificate of registration shall be not be transferred or assigned.

(6) The department may deem an application abandoned when the applicant fails to file a complete application, fails to timely provide any information required by this administrative regulation or requested by the department, or fails to pay the processing fee required by this administrative regulation.

#### Section 4. Denial, Suspension, or Revocation of Registration.

(1) The department may revoke, suspend, refuse to issue a registration, or accept surrender of a registration in lieu of revocation or suspension if the department finds that the person, applicant, or registrant:

(a) Failed to comply with the requirements of KRS 134.129 and this administrative regulation;

(b) Does not conduct his, her, or its business in accordance with the law;

(c) Is guilty of fraud in connection with any transaction governed by KRS 134.129 and this administrative regulation, or is the subject of an administrative cease and desist order or similar order, or permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act,

(d) Has made any misrepresentations or false statements to or concealed any essential or material fact or has suppressed or withheld from the department any information and which, if it had been properly and timely submitted or disclosed to the department, would have rendered the person ineligible to be registered under this administrative regulation;

(e) Has refused to permit an examination or investigation by the department of his or her books and affairs or has refused within

a reasonable time to furnish any information or make any disclosure that may be required by the department under the provisions of this administrative regulation,

(f) Has abandoned an application by failing to provide the department any information required or requested by the department under this administrative regulation to complete an application;

(g) Has employed or contracted with a person who has had an application denied or certificate of registration revoked or suspended under this administrative regulation;

(h) Has failed to pay any required fee under this administrative regulation,

(i) Has failed to pay any state tax or to comply with any administrative or court order directing the payment of state tax; or

(j) Has violated any provision under this administrative regulation or order issued by the commissioner.

(2) Any person whose registration has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension is prohibited from participating in any business activity of a registrant under this administrative regulation and from engaging in any business activity on the premises where a registrant under this administrative regulation is conducting its business.

(3) Any person who has had his or her application denied by the department may not file another application until January 1 of the year following the denial.

(4) Any person who has had his or her certificate of registration revoked twice may be permanently barred from applying for a certificate of registration.

(5) The commissioner may enter into a consent order with another person at any time for the purpose of resolving a matter arising under this administrative regulation

(6) Any consent order that the commissioner enters into to resolve a matter arising under this administrative regulation shall be deemed an administrative action and a public record.

(7) The commissioner may stay, suspend, or postpone the effective date of an order issued under this administrative regulation, pending the administrative proceeding and the issuance of a final order resulting from the proceeding, upon written request by the affected person or licensee

(8) The surrender or expiration of a registration shall not affect the registrant's civil or criminal liability for acts committed prior to the surrender or expiration. The surrender or expiration of a registration shall not affect a proceeding to revoke or suspend a registration.

Section 5. Notice and Right of Appeal. (1) The department shall provide written notice to an applicant whenever an application is denied or to a registrant whenever a certificate of registration is suspended or revoked. The notice shall be sent by certified mail or personal delivery to the last known address of the applicant or registrant, as provided by the applicant or registrant, according to the records of the department. An applicant or registrant is deemed to have received a copy of the written notice three (3) business days following the mailing thereof.

(2) Any applicant or registrant who has had his or her application denied or registration suspended or revoked may file a written request for a hearing.

(3) A written request for a hearing shall be filed with the department within (10) days of the date of the denial, suspension, or revocation; shall be made in good faith; and shall briefly state the reason or reasons the person is aggrieved, together with the grounds to be relied upon as a basis for the relief to be sought at the hearing

(4) A hearing shall be held within ten (10) days of the receipt of the written request for a hearing unless the parties agree otherwise.

(5) The commissioner shall appoint a hearing officer to preside over the matter. The hearing officer shall issue a recommended order within twenty-one (21) days of the hearing.

(6) The commissioner shall issue a final order within five (5) days of the issuance of the recommended order by hearing officer.

(7) Any person aggrieved by the decision of the commissioner may file an appeal to the Franklin Circuit Court within thirty (30) days of the issuance of the final order.

Section 6. Sharing of Information. Notwithstanding any provi-

sion to the contrary, the department may furnish to and exchange any information related to this administration regulation with officials of other properly authorized city, county, state or federal governmental authorities for official use only and on a confidential basis

Section 7. Fees. Each application shall be accompanied by a nonrefundable processing fee in the amount of \$250.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Certificate of Registration to Purchase Certificates of Delinquency", November 2009; and

(b) "Certificate of Registration", November 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2009, at 11 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person. DeVon Hankins, Policy Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the registration requirements and application process for persons to hold a certificate of registration prior to the payment of a certificate of delinquency. This administrative regulation establishes the administrative fee that may be charged to offset the cost of processing and reviewing the application for certificate of registration. This administrative regulation also defines "related entities" and "related interests".

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the state application and registration process for persons that intend to own more than 5 certificates of delinquency statewide, more than 3 certificates of delinquency in any county, or invest more than \$10,000 in the payment of certificates of delinquency statewide in a calendar year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 134.129(3) authorizes the Department of Revenue to promulgate administrative regulations to establish registration requirements, an application process, and an imposition of an administrative fee to offset the cost of processing and reviewing the application for a certificate of registration. KRS 134.128(2)(d)3 requires the department to define "related entities" and "related interests" for the purpose of regulating the sale of certificates of delinquency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a purchaser of certificate of delinquencies the informa-

tion necessary to file an application for a certificate of registration.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this regulation.

(c) How the amendment conforms to the content of the authorizing statute:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 5 to 10 individual and business purchasers of delinquent real property tax bills.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Currently, registration is not required with the state. Any person that intends on owning more than 5 certificates of delinquency statewide, more than 3 certificates of delinquency in any county, or investing more than \$10,000 in the payment of certificates of delinquency statewide in a calendar year will not be able to purchase any certificate of delinquency unless they complete an application and approved to hold a certificate of registration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)? Annual application and processing fee of \$250 will be required by each individual or business seeking a certificate of registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Individuals and entities whose applications are approved will be issued a certificate of registration which will allow them to purchase certificate of delinquencies.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Minimal

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation will be done with existing personnel.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An annual application and processing fee of \$250 is established that will be used to offset any anticipated increase in costs in the administration and enforcement of this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes an annual processing and application fee of \$250.

(9) **TIERING:** Is tiering applied? Tiering is not applied. This administrative regulation establishes the registration requirements and application process for persons to hold a certificate of registration prior to the payment of a certificate of delinquency. This is necessary for all individuals and companies intend on owning more than 5 certificates of delinquency statewide, more than 3 certificates of delinquency in any county, or investing more than \$10,000 in the payment of certificates of delinquency statewide in a calendar year.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 134.129(3), 134.128(2)(d)3.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

Specific dollar amounts cannot be determined for the increase in receipts that will be generated because of this administrative regulation, but there will be an acceleration of receipts from delinquent real property taxes at both the state and local levels due to the third-party purchase of certificate of delinquencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Specific dollar amounts cannot be determined for the increase in receipts that will be generated because of this administrative regulation, but there will be an acceleration of receipts from delinquent real property taxes at both the state and local levels due to the third-party purchase of certificate of delinquencies.

(c) How much will it cost to administer this program for the first year? There will be an additional cost in the processing and review of each application but those costs are anticipated to be offset by the application and processing fee.

(d) How much will it cost to administer this program for subsequent years? There will be an additional cost in the processing and review of each application but those costs are anticipated to be offset by the application and processing fee.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-)

Other Explanation:

**ENERGY AND ENVIRONMENT CABINET  
Department for Natural Resources  
Division of Mine Permits  
(New Administrative Regulation)**

**405 KAR 8:015. Processing assessments.**

RELATES TO: KRS 224.10-100(6), (20), 350.060, 350.070, 350.135

STATUTORY AUTHORITY: KRS 224.10-100(6), (20)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(20) provides the cabinet the authority to promulgate administrative regulations to establish a fee or schedule of fees for the cost of processing applications for permits. This administrative regulation establishes a schedule of assessments related to the processing of various types of permit applications corresponding to KRS Chapter 350.

Section 1. Processing Assessments. (1) An applicant shall remit a processing assessment on each of the following applications submitted to the cabinet. The assessments shall be applied in the following manner:

(a) \$2,125 for an original application;

(b) \$1,375 for an amendment or major revision;

(c) \$375 for a minor revision, renewal or transfer.

(2) The processing assessment shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. An application shall not be processed unless the appropriate assessment accompanies the application.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 27, 2009

FILED WITH LRC: November 3, 2009 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

December 21, 2009 at 1 p.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business December 31, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ronald P. Mills, Director, Division of Mine Permits, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-2340, fax (502) 564-5848, email Ron.Mills@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Ronald P. Mills, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a schedule of assessments related to the processing of various types of permit applications corresponding to KRS Chapter 350.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the assessment schedule to a permit applicant who submits an original application, renewal, major or minor revision, amendment, or a transfer.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(6) gives the cabinet the authority to provide for the control and regulation of surface coal mining and reclamation in a manner to accomplish the purposes of KRS Chapter 350. KRS 224.10-100(20) authorizes the cabinet to recover costs associated with the processing of applications for permits authorized by KRS 224.10-100. This administrative regulation establishes a processing assessment for original application, renewal, major or minor revision, amendment, or a transfer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes assessments that will enable the cabinet to perform the duties required by KRS Chapter 350.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact surface mines throughout the Commonwealth of Kentucky. There are 415 coal companies in the Commonwealth with inspectable permits. In Fiscal Year 2009 there were 1,187 permitting actions to which these assessments would have been applicable. The ten year average is 1,012.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will be responsible for submitting the appropriate assessment with their permit applica-



tions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The type of permit application the regulated entity submits will determine the cost to the entity. The associated costs are:

- \$2,125 for an original application;
- \$1,375 for an amendment or major revision;
- \$375 for a minor revision, renewal or transfer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) The proposed assessments will enable the Division of Mine Permits to hire additional permit review staff which will decrease the permit review time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Implementation of these changes will be absorbed by current staff.

(b) On a continuing basis: Implementation of these changes will be absorbed by current staff on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source associated with this program amendment will be the assessments listed above. However, these assessments will be deposited into a Restricted Fund for the sole use of the department.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does establish an assessment that will fund the program change.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an assessment that follows the schedule listed in Section 1 of this administrative regulation.

(9) TIERING: Is tiering applied? Yes. Tiering was applied to the cost of the permit applications. Depending on the type of application a different assessment amount was established.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits will be impacted because the established assessment will be used to hire additional staff in order to reduce permit review time.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(6) provides for the control and regulation of surface coal mining and reclamation in a manner to accomplish the purposes of KRS Chapter 350. KRS 224.10-100(20) authorizes the cabinet to recover costs associated with the processing of applications for permits authorized by KRS 224.10-100.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will increase the revenues of the state by approximately \$794,500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will increase the revenues of the state by approximately \$794,500 in subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will generate revenue. However, existing resources will be used to process assessments.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will generate revenue. However, existing resources will be used to process assessments.

quent years? This administrative regulation will generate revenue. However, existing resources will be used to process assessments.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

- Revenues (+/-): N/A
- Expenditures (+/-): N/A
- Other Explanation: N/A

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Libraries and Archives Public Records Division (New Administrative Regulation)

##### 725 KAR 1:025. Transfer of public records.

RELATES TO: KRS 171.470, 171.480, 171.500, 171.520

STATUTORY AUTHORITY. KRS 61.8715, 61.878, 171.420, 171.470, 171.480, 171.500, 171.520, 171.550, 171.560, 171.580, 171.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.520 and 171.580 require the department to insure maintenance and security of records appropriate for preservation and access, to facilitate segregation and disposal of records of temporary value, to direct and effect transfer of public records, and to use space economically and efficiently to maintain, store, and service, and provide access for records.

Section 1. In order to safeguard the present and future interests of the people of the Commonwealth, all agencies of state and local government shall ensure the safety, security, and preservation of public records and adequate documentation of government agencies by following this administrative regulation and related procedures issued by the Department for Libraries and Archives concerning the transfer of public records.

Section 2. Transfer of records may occur from state, local, or judicial agencies to the State Archives, the State Records Center, and the Electronic Archives, all maintained by the Department for Libraries and Archives, in accordance with KRS 171.560 and 171.580, and with policies and procedures of the Department for Libraries and Archives.

Section 3. For physical transfer of public records from government agencies to one (1) of the facilities of the Department for Libraries and Archives, follow the standards and procedures in "Transfer of Public Records: A Procedural Guide." Transmittal documentation confirms the transfer of government records in all instances.

Section 4. Intellectual custody of records in the physical custody of the State Records Center remains with the originating agency. Physical and intellectual custody of records in the State Archives and the Electronic Archives is transferred to the Department for Libraries and Archives upon accession into the Archives, in accordance with KRS 171.580. Any records fifty (50) years or older that are not in the department's custody may be directed for transfer for continuing preservation and public access, subject to exemptions in the Open Records Law.

Section 5. The State Archives and Records Commission shall be the final authority in the executive branch of government for the disposition of all public records in Kentucky, and shall make decisions on records retention and disposition through the records scheduling process, in consultation with the Department for Libraries and Archives and the agencies involved. These decisions govern the transfer of records, the locations to which records are transferred, and the use of records after transfer. The Department for Libraries and Archives and the State Archivist and Records Administrator will carry out the decisions of the commission.

Section 6. Incorporation by Reference. (1) "Transfer of Public Records: A Procedural Guide," October 2009, is incorporated by



reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Public Records Division, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WAYNE ONKST, Commissioner

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2009 at 10 a.m. at the offices of the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Board Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than December 14, 2009, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON** Wayne Onkst, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, phone (502) 564-8300 ext. 312, fax (502) 564-5773.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Wayne Onkst, Commissioner

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes standards and procedures for transferring public records from government agencies to the Department for Libraries and Archives, either to the State Records Center for short-term storage, or to the State Archives, for permanent preservation.

(b) The necessity of this administrative regulation: This regulation provides specific procedures for transferring government records from the originating agency to the Department for Libraries and Archives.

(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation directly conforms to the Public Records Law, that directs facilities to store, service, and provide access to records.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This regulation provides specific procedures for transferring records.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statute:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state, local, and judicial government agencies in Kentucky are affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The transfer procedures have been in place and adhered to by government agencies since the State Archives started accessioning records in 1963 and since the State Records Center began offering cost-effective high volume storage since 1983. Nothing will change for the agencies, other than having the procedures and

policies incorporated by reference into the regulation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: State and local government agencies with compliant records management programs are already performing their duties under this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with records management programs and proper transfer and storage of records to facilities purposed for records storage are cost-saving measures.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits of this regulation include proper recordkeeping, good records management programs, storage and maintenance of government records according to national standards and best practices for records management and archives, and cost-savings through using efficient short-term storage in the State Records Center.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Department for Libraries and Archives has operated the State Archives and State Records Center for many years. The State Records Center is at capacity, and more space is needed for storage of agency short-term or high-use records. The State Records Center operates on a cost-recovery basis with agency funds, while the State Archives is funded with general funds.

(b) On a continuing basis: The State Records Center needs to be expanded, in order to provide additional efficient and professional storage for Kentucky public records.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The State Records Center operates on a cost recovery basis, entirely on agency funds. The State Archives operates on general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation does not call for an increase in fees, although periodic assessment of rent, supply, equipment, and labor costs might cause an increase to recover costs for the State Records Center.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? N/A

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All government units are impacted by public records transfer.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.8715, 61.878, 171.420, 171.470, 171.480, 171.500, 171.520, 171.550, 171.560, 171.580, 171.590.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Transfer of records results in cost savings for government agencies, as records are stored more efficiently in high volume, in facilities expressly purposed for records storage.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The State Records Center operates on a cost recovery basis, and is basically revenue neutral. Approximately 450,000 has been generated and then spent on storage of agency records for the past several years. The State Archives does not generate revenue, other than small amounts for copying charges to pay for paper and supplies. Both facilities save other agencies money in storage costs by providing

centralized secure storage. Storage is at no cost in the State Archives, for permanent records, and storage is very low cost for high use or temporary records at the State Records Center.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Generally, about the same as over the past few years, although more agencies request the services of the State Records Center than can be accommodated with the current space and staff. Agencies request that the Records Center expand in order to hold more records, as cost comparisons with records storage vendors show how the Records Center is able to keep costs to a minimum, in comparison with the exorbitant charges of vendors. Expansion of the service could result in increased revenue, and in greater cost-savings for agencies. The State Archives does not generate revenue, other than small amounts for copying charges to pay for paper and supplies.

(c) How much will it cost to administer this program for the first year? Approximately the same as last year.

(d) How much will it cost to administer this program for subsequent years? Approximately the same, although an increase in volume of records will slightly increase revenue, while greatly increasing individual cost saving at agencies.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings, and Construction**  
**Division of Heating, Ventilation, and**  
**Air Conditioning Contractors**  
**(New Administrative Regulation)**

**815 KAR 8:050. Continuing education requirements for Heating, Ventilation, and Air Conditioning license holders.**

RELATES TO: KRS 198B.684, 198B.658, 198B. 660, 198B.664, 198B.672, EO 2009-535

STATUTORITY AUTHORITY: KRS 198B 684. EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the Kentucky Board of Heating, Ventilation, and Air Conditioning to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B 689. KRS 198B.684 allows the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors to adopt by administrative regulation standards for continuing education for licensees and certificate holders. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings, and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes continuing education requirements for Heating, Ventilation, and Air Conditioning license holders.

Section 1. Master Heating, Ventilation, and Air Conditioning Contractor Licensees. (1) Each Master Heating, Ventilation, and Air Conditioning Contractor shall provide proof of completion of at least eight (8) hours of approved continuing education prior to license renewal

(2) The required continuing education shall be completed by licensee within the twelve (12) months preceding renewal

(3) Continuing education courses shall relate to one (1) or more of the following:

(a) Business;

(b) Job safety;

(c) Codes relating to Heating, Ventilation, and Air Conditioning; and

(d) Subjects directly relating to the Heating, Ventilation, and Air Conditioning Trade and approved by the board or its designee.

Section 2. Journeyman Heating, Ventilation, and Air Condi-

tioning Licensees. (1) Each journeyman shall provide proof of completion of at least eight (8) hours of approved continuing education prior to license renewal.

(2) The required continuing education shall be completed by licensee within the twelve (12) months preceding renewal.

(3) Continuing education courses shall relate to one (1) or more of the following:

(a) Business;

(b) Job safety;

(c) Codes relating to Heating, Ventilation, and Air Conditioning; and

(d) Items directly relating to the Heating, Ventilation, and Air Conditioning Trade as approved by the board or their designee.

(4) A maximum of four (4) hours of continuing education relating to job safety is allowed towards annual journeyman license renewal.

Section 3. Combined Master and Journeyman Licensees. An individual that is a holder of both a master and a journeyman license shall meet the continuing education requirements of Section 1 of this administrative regulation.

Section 4. Inactive Master Heating, Ventilation, and Air Conditioning Contractor Licensees (1) An inactive Master Heating, Ventilation, and Air Conditioning Contractor shall not be required to complete continuing education to maintain inactive status.

(2) If an inactive Master Heating, Ventilation, and Air Conditioning Contractor wishes to activate his or her license to the status of an active Master Heating, Ventilation, and Air Conditioning Contractor, he or she shall complete four (4) hours of current safety standards continuing education and four (4) hours of current mechanical code continuing education.

(3) Proof of completion of continuing education requirements shall be submitted to the department prior to reactivation of license(s)

Section 5. Continuing Education Courses. (1) All continuing education required for master and journeyman license holders shall be completed in courses approved by the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors or it's designee pursuant to 815 KAR 8 060

(2) Continuing education courses shall be offered only by providers approved by the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors or it's designee pursuant to 815 KAR 8:060

(3) Continuing Education Courses shall be a minimum of two (2) hours. One (1) hour of class shall be equivalent to fifty (50) minutes of classroom instruction.

(4) Continuing education courses offered by a provider not approved in accordance with 815 KAR 8:060 shall be considered for approval by the board or its designee if the following are met:

(a) Approval is requested by the individual license holder thirty (30) days in advance of course date;

(b) A detailed syllabus of the course is provided with the request; and

(c) The course is determined by the board or it's designee to be beneficial to the licensee in the HVAC trade.

(5) The board or its designee shall approve a request if the information has been submitted in accordance with subsection (4) of this section, and the course complies with the standards of approved courses. The license holder shall provide an affidavit from the instructor verifying the hours of attendance.

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings, and Construction**  
**Division of Heating, Ventilation, and**  
**Air Conditioning Contractors**  
**(New Administrative Regulation)**

**815 KAR 8:060. Requirements for approval of continuing education courses and providers.**

RELATES TO: KRS 198B.684, 198B.658, 198B.660, 198B.664

and 198B.672, EO 2009-535

STATUTORY AUTHORITY: KRS 198B.684, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198.684 allows the board to promulgate an administrative regulation to establish requirements for approval of continuing education courses and providers. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings, and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the requirements for approval of continuing education courses and providers.

Section 1. Requirements for Continuing Educational Provider Approval. (1) Continuing Education Providers shall either be a:

- (a) Trade Association with affiliation to the Heating, Ventilation and Air Conditioning Trade;
- (b) Trade school;
- (c) College;
- (d) Technical school;
- (e) Business dedicated solely to providing continuing education and which provides at least one (1) course in each of the congressional districts quarterly;
- (f) Heating, Ventilation, and Air Conditioning Company that employs full-time training personnel to conduct continuing education programs providing continuing education for journeymen only; or

(g) Heating, Ventilation, and Air Conditioning manufacturer or distributor that employs a full time training personnel to conduct continuing education programs providing continuing education for journeymen only.

(2) Each continuing education course provider shall register with the department as required by subsection (3) of this section before submitting course materials for department approval. Registration shall be valid for two (2) years from the date of issuance.

(3) Course providers shall register on Form HVAC 9 provided by the department and shall include the following:

- (a) Company name;
- (b) Contact person;
- (c) Mailing address;
- (d) Email address;
- (e) Telephone number; and
- (f) Fax number.

(4) The department shall maintain a list of approved continuing education course providers.

(5) Each course provider shall report to the department any change to the information submitted in the initial application within thirty (30) days after the change takes effect.

(6) For each course approved, the provider shall distribute a questionnaire in the format provided by the department to each applicant in attendance for the purpose of rating the course.

Section 2. Continuing Education Course Approval. (1) A separate application for approval shall be submitted to the department on Form HVAC 9 for each course offered by the course provider.

(2) An application for approval of a continuing education course shall be submitted only by approved providers registered with the department. Applications shall be submitted at least sixty (60) days prior to the course's offering.

(3) A continuing education course shall provide instruction in at least one of the subject areas specified in this administrative regulation.

(4) The course application shall include the following:

- (a) Name of the course;
- (b) Name and registration number of the provider;
- (c) A course syllabus;
- (d) Name of the instructor or presenter along with his or her qualifications;
- (e) The amount of actual time needed to present the course;
- (f) The objectives of the course; and
- (g) A statement of the practicality of the course to the HVAC

trade.

(5) Content changes made to the course shall require a subsequent submission to the department for review and approval.

(6) Course approval shall be valid for two (2) years from the date of department approval.

(7) The department shall issue a course number for each approved course. The course number and the provider's number shall appear on all advertisements and certificates for the course.

(8) Providers shall submit to the department a quarterly schedule including dates and locations of courses by January 1st, April 1st, July 1st, and October 1st annually.

(9) The department shall receive notification of scheduling changes at least ten (10) working days prior to the originally scheduled course date by fax or e-mail to the Director of HVAC.

(10) Cancellations.

(a) The provider shall give notice of cancellation no less than five (5) working days prior to scheduled classes unless the Governor declares a state of emergency or other conditions exist that would preclude a five (5) day notification of cancellation.

(b) If a scheduled class is cancelled, the registrant has the option to attend a rescheduled class or receive a full refund for the cancelled class from the provider.

(c) A registrant who notifies a provider of registration cancellation prior to five (5) working days of a scheduled course may choose either a full refund or to attend a subsequent course.

(d) Providers shall not cancel a course with ten (10) or more registrants, unless it is the result of an emergency.

Section 3. Continuing Education Course Records. (1) Each registered course provider shall establish and maintain for three (3) years the following records for each approved course:

(a) Certificates of completion as provided in subsection (2) of this section;

(b) An attendance sign-in and sign-out sheet, and

(c) A course syllabus.

(2) Certificates of completion.

(a) Each registered course provider shall issue a certificate of completion for each participant who enrolled and completed an approved continuing education course.

(b) Certificates of completion shall contain the following information about the individual participant:

- 1. Name;
- 2. Address;
- 3. License number(s);
- 4. Date of attendance; and
- 5. Course completed.

(c) One (1) copy of the certificate of completion shall be:

- 1. Sent to the department electronically;
- 2. Retained on file by the provider in compliance with subsection 1 of this section; and
- 3. Given to the participant upon completion of the course.

Section 4. Course Audits. (1) Records requested in writing by the department shall be delivered to the department within ten (10) days of the requesting date.

(2) Representatives of the department may, at any time, attend an approved continuing education course to ensure that the course meets the stated objectives and that applicable requirements are being met.

Section 5. Disciplinary Action. Provider approval shall be revoked if the department determines that the provider:

(1) Obtains, or attempts to obtain, registration or course approval through fraud, false statements, or misrepresentation;

(2) Does not provide complete and accurate information in either the initial registration or in any notification of changes to the information;

(3) Advertises a course as being approved by the department prior to receiving approval; or

(4) Fails to comply with the requirements of this administrative regulation.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form HVAC 8, Application for Approval as a Continuing Education Course Provider for HVAC Licensure, November 2009; and

(b) Form HVAC 9, Application for Continuing Education Course for HVAC Licensure, November 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, HVAC Division, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4.30 p.m.

RICHARD MOLONEY, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

**CONTACT PERSON:** Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for approval of HVAC continuing education courses and continuing education providers.

(b) The necessity of this administrative regulation: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689 and 198B.684 authorizes the Board to establish continuing education requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for approval as an HVAC continuing education course provider and the requirements for approval of HVAC continuing education courses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the requirements for continuing education providers and continuing education classes to gain approval as authorized by KRS 198B.654 and 198B.684.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Housing, Buildings and Construction, Division of HVAC and HVAC continuing education providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: HVAC continuing education providers shall submit an application for approval as a provider and for each course to be administered by the provider. Additionally, the provisions for cancellation of courses and minimum offering of HVAC continuing education courses is set forth in this regulatory amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment results in no additional or new costs to HVAC continuing education course providers.

(c) result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include standardization of the approval procedure for HVAC continuing education providers and HVAC continuing education courses which will be accepted towards annual continuing education requirements necessary for license renewal.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no additional or new costs associated with the implementation of this administrative regulation.

(b) On a continuing basis: There are no additional or new costs associated with implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing HVAC funds will be utilized for the administration of approving HVAC continuing education providers and HVAC continuing education courses

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation will not necessitate an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish new fees nor will it directly or indirectly increase existing fees.

(9) TIERING. Is tiering applied? Tiering is not applied to this administrative regulation; all HVAC continuing education course providers and HVAC continuing education courses will be treated equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings, and Construction, Division of HVAC will be impacted by this amended administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.654 and 198B.684.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes no new fees nor creates new expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. This regulatory amendment will result in no new revenues or expenditures.

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no anticipated fiscal impact from this administrative regulation to state or local government.

# CABINET FOR HEALTH AND FAMILY SERVICES

## Office of Inspector General

### Division of Health Care

#### (New Administrative Regulation)

## 906 KAR 1:180. Operation and services; personal services agencies.

RELATES TO: KRS Chapter 13B, 209.030(2), (3), 216.710-216.716, 216B.015, 620.030(1)

STATUTORY AUTHORITY: KRS 216.712(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.712(1) provides that no personal services agency shall be operated, maintained, or advertised without obtaining certification from the Cabinet for Health and Family Services. KRS 216.712(4) requires the cabinet Secretary to promulgate administrative regulations to implement KRS 216.712 through 216.716. This administrative regulation establishes standards for the certification of personal services agencies.

Section 1. Definitions. (1) "Adverse action" means action taken by the cabinet's Office of Inspector General (OIG) to deny or revoke the certification of a personal services agency.

(2) "Cabinet" is defined by KRS 216.710(1).

(3) "Certification" means that a person, business entity, corporation, or association, either for-profit or not-for-profit, has been issued a certificate by the Office of Inspector General to operate a personal services agency.

(4) "Client" is defined by KRS 216.710(2).

(5) "Designated representative" is defined by KRS 216.710(5).

(6) "Direct service" is defined by KRS 216.710(6).

(7) "Employee" means an individual who is directly employed by a personal services agency, an agent of a personal services agency, or an independent contractor who has a contractual arrangement with a personal services agency to provide personal services.

(8) "Facilitate the self-administration of medication" means:

(a) Reminding the client to take medications;

(b) Reading the medication's label;

(c) Confirming that medication is being taken by the client for whom it is prescribed;

(d) Opening the dosage packaging or medication container but not removing or handling the actual medication;

(e) Storing the medication in a manner that is accessible to the client; and

(f) Making available the means of communicating with the client's physician and pharmacy for prescriptions by telephone, facsimile, or other electronic device.

(9) "Parent personal services agency" is defined by KRS 216.710(9).

(10) "Personal services" is defined by KRS 216.710(7)

(11) "Personal services agency" is defined by KRS 216.710(8).

(12) "Provisional certification" means that the Office of Inspector General (OIG) has issued a ninety (90) day preliminary certificate to operate a personal services agency to a person, business entity, corporation, or association, either for-profit or not-for-profit, which:

(a) Has three (3) or fewer employees at the time of initial application; and

(b) Indicated on the application that it intends to hire additional employees within ninety (90) calendar days of the date of the application.

(13) "Significant financial interest" means lawful, direct or indirect ownership of a personal services agency or health care facility licensed pursuant to KRS Chapter 216B in an amount equal to or greater than twenty-five (25) percent total ownership of the personal services agency or health care facility.

Section 2. Certification of Personal Services Agencies. (1) To operate a personal services agency, a person or entity shall obtain certification from the Office of Inspector General.

(2) An out-of-state personal services agency shall be required to establish a parent personal services agency in Kentucky to obtain certification.

(3) A branch office of a parent personal services agency shall be owned and controlled by the parent personal services agency.

(4) A "health facility" or a "health service" as defined by KRS 216B.015 or a health-care practitioner licensed, certified, or regulated by local, state, or federal statutes or regulations shall not be required to obtain certification to provide personal services pursuant to KRS 216.710(7)(b)9.

Section 3. Initial Application, Provisional Certification, and Approval. (1)(a) Except for an entity that operates a personal services agency in Kentucky prior to December 31, 2009, no person, entity, corporation, or association shall provide personal services prior to obtaining certification.

(b) Pursuant to KRS 216.712(1), an entity that operates a personal services agency in Kentucky prior to December 31, 2009, shall have until that date to file an application as described in subsection (2) of this section.

(2) An applicant for initial certification, including provisional certification, shall submit to the OIG:

(a) An initial application fee of \$500 made payable to the Kentucky State Treasurer;

(b) A completed Application for Certification to Operate a Personal Services Agency, OIG - 1180, November 2009, incorporated by reference in Section 16 of this administrative regulation; and

(c) Documentation required by Section 3.A if applicable, and Section 6 of the application.

(3) Approval of initial certification shall be contingent on:

(a) Submission of the initial application fee of \$500;

(b) The applicant's demonstration of compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

(c) Submission of the documentation required by Section 3.A if applicable, and Section 6 of the application.

(4)(a) Approval of provisional certification shall be contingent on:

1. Submission of the initial application fee of \$500;

2. The applicant's demonstration of compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

3. Submission of the documentation required by Section 3.A if applicable, and Section 6 of the application.

(b) A personal services agency operating under provisional certification shall, no later than fourteen (14) calendar days prior to expiration of the provisional certificate, submit employee information required by Section 6, paragraph 2 of the Application for Certification to Operate a Personal Services Agency, OIG - 1180 for each employee hired by the agency after submission of the application for initial certification.

(c) If a personal services agency operates under provisional certification prior to approval of initial certification, the initial certification period shall expire one (1) year from the date of the provisional certificate.

Section 4. Annual Recertification. (1) At least sixty (60) calendar days prior to expiration of certification, the personal services agency shall submit to the OIG:

(a) An annual recertification fee of \$350 made payable to the

Kentucky State Treasurer;

(b) A completed Application for Certification to Operate a Personal Services Agency, OIG - 1180, November 2009, incorporated by reference in Section 16 of this administrative regulation; and

(c) Documentation required by Section 6 of the application.

(2) Approval of recertification shall be contingent on:

(a) Submission of the annual recertification fee of \$350;

(b) The applicant's demonstration of continued compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

(c) Submission of documentation required by Section 6 of the application.

Section 5. Change of Status. (1) Within thirty (30) calendar days after a change in an ownership interest of more than twenty-five (25) percent of a personal services agency, the following shall be submitted to the OIG:

(a) An Application for Certification to Operate a Personal Services Agency, OIG - 1180;

(b) Documentation required by Section 3.A if applicable, and Section 6 of the application;

(c) A fee of \$350 made payable to the Kentucky State Treasurer; and

(d) A bill of sale or comparable document which includes:

1. The name and signature of the new owner or corporation;

2. The name and signature of the buyer and the seller; and

3. The effective date of the transaction.

(2) Following a change of ownership reported in accordance with subsection (1) of this section, certification shall be effective for a period of one (1) year from the date the change of ownership is approved by the OIG.

(3) A personal services agency shall notify the OIG in writing within thirty (30) calendar days after the effective date of:

(a) A change of name;

(b) A change in the location of the parent personal services agency or a branch office;

(c) The opening of a new branch office in Kentucky; or

(d) The closing of the parent personal services agency or an existing branch office within the state.

Section 6. Staff Requirements. (1)(a) A personal services agency shall employ an individual to act as the personal services agency's manager.

(b) The manager shall be responsible for the organization and daily operation of the personal services agency.

(c) The manager shall designate in writing one (1) or more individuals to act on behalf of, or to perform any or all of the manager's responsibilities during the time in which the manager is unavailable to perform daily managerial duties for at least three (3) consecutive business days.

(2) Prior to acting as a personal services agency's manager, or prior to providing direct services to a client, an applicant for employment in a personal services agency shall submit to, and have completed a:

(a)1. Criminal record check conducted by the Justice and Public Safety Cabinet or the Administrative Office of the Courts; or

2. Criminal record check conducted by means of a fingerprint check of the National Crime Information Database;

(b) Check of the nurse aide and home health aide abuse registry established pursuant to 906 KAR 1:100;

(c) Substance abuse test; and

(d)1. A tuberculosis (TB) risk assessment performed and reported by a physician, advanced registered nurse practitioner, physician's assistant, or registered nurse.

2. If the TB risk assessment indicates that the applicant for employment is at increased risk for developing tuberculosis infection, or for progressing to active TB disease if infected, the individual shall submit to the following for purposes of employment:

a. Follow-up tuberculin skin test (TST); or

b. Blood assay for M. tuberculosis (BAMT).

3. An individual who has a positive TST result or a positive BAMT result:

a. Shall have a medical evaluation for possible active TB and

receive a chest x-ray; and

b. Shall not provide direct services to a client until evidence is provided to the personal services agency documenting that the individual is free of active TB as verified through a health professional's statement, signed by a physician, advanced registered nurse practitioner, physician's assistant, or registered nurse.

(3) A personal services agency shall not employ an individual to serve as a manager or provide direct services to a client if the individual:

(a) Has been convicted of a crime defined by KRS 216.710(3);

(b) Appears on the nurse aide and home health aide abuse registry;

(c) Tests positive for the presence of an illegal drug; or

(d) Fails to provide:

1. A copy of the results of a health professional's statement documenting that the individual is free of active tuberculosis;

2. Documentation of a negative TST; or

3. Documentation of a negative BAMT.

(4) A personal services agency shall require its manager and each employee who provides direct services to a client to submit annually to, and have completed a:

(a)1. Criminal record check conducted by the Justice and Public Safety Cabinet or the Administrative Office of the Courts; or

2. Criminal records check conducted by means of a fingerprint check of the National Crime Information Database;

(b) Check of the nurse aide and home health aide abuse registry established pursuant to 906 KAR 1:100; and

(c)1. Tuberculosis risk assessment performed and reported by a physician, advanced registered nurse practitioner, physician's assistant, or registered nurse.

2. If a determination is made from the annual tuberculosis risk assessment that the employee is at increased risk for developing tuberculosis infection, or for progressing to active TB disease if infected, the employee shall submit to a follow-up TST or BAMT.

3. An employee who has a positive TST result or a newly positive BAMT shall have a medical evaluation for possible active TB and receive a chest x-ray.

4. If the annual tuberculosis screening reveals that the employee is recently infected, the employee shall not provide direct services to a client until evidence is provided documenting that the employee is free of active tuberculosis as verified through a health professional's statement signed by a physician, advanced registered nurse practitioner, physician's assistant, or a registered nurse.

(5) A personal services agency shall maintain documentation of the following in employee records:

(a) The results of each criminal record check conducted pursuant to subsections (2)(a) and (4)(a) of this section;

(b) The results of each check of the nurse aide and home health aide abuse registry conducted pursuant to subsections (2)(b) and (4)(b) of this section;

(c) The results of the substance abuse test conducted pursuant to subsection (1)(c) of this section; and

(d) Documentation from a health professional that the employee is free of active TB and, if applicable, documentation of a follow-up TST or BAMT, chest x-ray, or medical evaluation.

(6) A personal services agency shall:

(a) Maintain employee records for a period of at least five (5) years; and

(b) Ensure that the records of current employees are:

1. Maintained on the premises of the agency; or

2. Accessible via a central computer file.

(7) No personal services agency or agency employee shall be, or apply to be a client's:

(a) Guardian;

(b) Power of attorney;

(c) Conservator;

(d) Limited conservator;

(e) Limited guardian;

(f) Standby guardian; or

(g) Testamentary guardian.

Section 7. Staff training and Competency. (1) Prior to providing direct services to a client, each employee shall receive training



from the personal services agency regarding the following:

(a) Procedures for reporting abuse, neglect, or exploitation of an adult pursuant to KRS 209.030(2) and (3), or child abuse or neglect pursuant to KRS 620.030(1);

(b) Procedures for facilitating the self-administration of medications, which prohibits an employee from:

1. Removing medication from its packaging or medication container; or

2. Handling medication for a client; and

(c) Effective communication techniques tailored to individual client needs.

(2)(a) A personal services agency shall evaluate the competency of each employee who will provide direct services to a client.

(b) The agency's evaluation to determine competency shall pertain to each personal services task the agency chooses to have the employee perform.

(3)(a) An employee's evaluation and a determination by the personal services agency that the employee is competent to perform a personal services task shall occur before the employee performs the task for a client without direct agency supervision.

(b) The content of the employee's training and evaluation shall:

1. Be documented and maintained in the employee's record, which shall be retained for a period of at least five (5) years; and

2. Include the date and the signature of the:

a. Person who conducted the training and evaluation; and

b. Employee who received the training and evaluation.

**Section 8. Service Agreement.** (1) Each personal services agency shall provide a written service agreement to the client or the client's designated representative that includes the following:

(a) The charge for each service provided by the personal services agency;

(b) The personal services agency's policy for notifying the client or client's designated representative of any change in the charge for services. Notice of an increase in the charge for services shall be given to a participating client or client's designated representative at least thirty (30) calendar days in advance of the effective date of the increase, and any increase in the amount billed to the client shall be documented on the client's service plan in accordance with Section 9(3) of this administrative regulation;

(c) The hours the personal services agency's office is open for business;

(d) The procedure for contacting the personal services agency's manager or the manager's designee;

(e) The procedure and telephone number to call for the purpose of filing a grievance with the personal services agency as described in Section 10 of this administrative regulation;

(f) An explanation of whether the personal services agency:

1. Directly employs the individual who will be providing personal services to the client;

2. Provides bonded protection for the client; and

3. Pays workers compensation or other benefits for the individual who will be providing personal services to the client;

(g) Name of the personal services agency's owner, including anyone with a significant financial interest in the agency;

(h) The procedure for changing or terminating a client's service plan; and

(i) A statement of client rights, which shall include the following:

1. The client has the right to have the client's property treated with respect;

2. The client has the right to request a change in his or her service plan, including the temporary suspension, permanent termination, temporary addition, or permanent addition of a service;

3. The client has the right to file a grievance as described in Section 10 of this administrative regulation regarding services, employee conduct, or the lack of respect for property and not be subject to discrimination or reprisal for filing the grievance; and

4. The client has the right to be free from verbal, physical, and psychological abuse and to be treated with dignity.

(2) A personal services agency shall report to the cabinet an incident of suspected:

(a) Abuse, neglect, or exploitation of an adult pursuant to KRS 209.030(2) and (3); or

(b) Child abuse or neglect pursuant to KRS 620.030(1).

**Section 9. Service Plan.** (1) A personal services agency's manager or the manager's designee shall prepare a service plan. The initial service plan shall:

(a) Be in writing, dated, and signed by the:

1. Individual who prepared it; and

2. Client or client's designated representative;

(b) List the types and schedule of services to be provided to the client; and

(c) Identify the charge per service and total amount that will be billed to the client.

(2)(a) A change in the provision of any service shall be documented in the written service plan.

(b) If a change in services results in a change in the amount billed to the client, the revised service plan shall include an explanation of the new charges to the client and be signed and dated by:

1. The personal services agency employee who documented the change in the plan; and

2. The client or the client's designated representative.

(c) If a change in services does not result in any change in the amount billed to the client, the revised service plan shall not require a second signature by the client or the client's designated representative.

(3) A personal services agency shall provide a copy of the service plan to the client within ten (10) calendar days of the date that:

(a) The agency begins providing initial services; or

(b) A change in the provision of a service is documented in the written service plan.

**Section 10. Client Grievances.** (1) A personal services agency shall investigate a grievance made by a client or the client's designated representative alleging:

(a) An issue with a service that is furnished;

(b) Failure to furnish a service listed in the service plan;

(c) Failure to provide thirty (30) day advance notice of an increase in the amount the agency charges for its services;

(d) Inappropriate conduct of an employee while the individual is providing services to the client; or

(e) A violation of the client's rights.

(2)(a) A personal services agency shall:

1. Document how the agency investigated each grievance; and

2. Maintain on file for a period of at least five (5) years a written record documenting the outcome of the agency's investigation, including any action taken by the agency.

(b) Upon completing an investigation of a grievance, the personal services agency shall document that it notified the individual who reported the grievance of the outcome of the investigation and any action the agency plans to take as a result.

**Section 11. Complaint Investigations.** (1) The OIG shall investigate a:

(a) Report of any business that provides personal services without receiving certification. A report received prior to December 31, 2009, of a business that provides personal services without certification shall not be accepted for investigation;

(b) Report of any business that markets its services as a personal services agency without receiving certification. A report received prior to December 31, 2009, of a business that markets its services as a personal services agency without certification shall not be accepted for investigation;

(c) Complaint against a certified personal services agency in which the agency is alleged to be in noncompliance with the requirements of this administrative regulation or KRS 216.712;

(d) Complaint against a certified personal services agency in which an agency employee is alleged to have abused or neglected a client, or misappropriated a client's property; or

(e) Complaint against a certified personal services agency in which an agency employee is alleged to have provided services to a client that exceed the scope of personal services or facilitated the self-administration of medication in a manner that fails to comply with the criteria established pursuant Section 1(8) of this administrative regulation.

(2)(a) A certified personal services agency or a business that is the subject of a complaint investigation shall not deny access to a



representative of the OIG, after proper identification, to make an inspection for determining compliance with the requirements of this administrative regulation or KRS 216.712.

(b) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the OIG to enter the agency or deny access to records related to an inspection or investigation shall result in revocation of a personal services agency's certification.

**Section 12. Request for Additional Information and Plans of Correction.** (1) An entity that applies for initial certification prior to December 31, 2009, shall submit, within sixty (60) calendar days from the date the OIG receives the entity's Application for Certification to Operate a Personal Services Agency, OIG - 1180, documentation that its manager and each employee who provides direct services have submitted to, and completed the:

(a) Substance abuse test required by Section 6(2)(c) of this administrative regulation; and

(b) Tuberculosis screening required by Section 6(2)(d) of this administrative regulation.

(2) If an entity fails to submit documentation as required by subsection (1) of this section within sixty (60) calendar days from the date the application is received by the OIG, the application shall be considered incomplete and certification shall not be approved.

(3)(a) The OIG shall notify an applicant or certified personal services agency in writing after:

1. Receipt of an incomplete or illegible application for initial certification or recertification;

2. Receipt of an application for initial certification or recertification in which additional information is needed by the OIG to verify that the applicant or personal services agency is in compliance with the requirements of this administrative regulation and KRS 216.712; or

3. Completion of a complaint investigation pursuant to Section 11 of this administrative regulation.

(b) The OIG's written notification specified in paragraph (a) of this subsection shall request that the applicant or certified personal services agency submit the following within ten (10) calendar days of the date of the notice:

1. Additional information needed by the OIG to deem an initial or recertification application as complete or legible. An exemption to the ten (10) day submission requirement shall apply if the personal services agency has been granted a sixty (60) calendar day extension to submit evidence of substance abuse testing or tuberculosis screening in accordance with subsection (1) of this section;

2. Additional information needed by the OIG to make a determination of compliance with the requirements of this administrative regulation and KRS 216.712; or

3. A written plan of correction if the OIG has found upon completion of a complaint investigation that the certified personal services agency is in violation of this administrative regulation or KRS 216.712. A plan of correction shall

a. Be signed by the personal services agency's owner or manager;

b. Specify the date by which the agency intends to have corrected the violation;

c. Identify the specific measures the agency intends to use to correct the violation; and

d. Identify the specific measures the agency plans to use to ensure the violation will not recur.

(c) The OIG shall review additional information or a written plan of correction submitted pursuant to paragraph (b) of this subsection and notify the applicant or certified personal services agency in writing of the decision to:

1. Approve or not approve an application;

2. Accept or not accept a plan of correction; or

3. Deny or revoke certification for a violation of this administrative regulation or KRS 216.712.

(d) If the OIG determines that a plan of correction is not acceptable and makes a written request for an amended plan of correction, the certified personal services agency shall submit the amended plan of correction within ten (10) calendar days of the date of the OIG's written request. The OIG shall review an

amended plan of correction and notify the personal services agency in writing of the decision to:

1. Accept the amended plan of correction;

2. Deny or revoke certification for a violation of this administrative regulation or KRS 216.712; or

3. Require the agency to submit an acceptable plan of correction.

(e) A certified personal services agency that fails to submit an acceptable plan of correction or acceptable amended plan of correction shall have its certification revoked.

(4) The OIG may impose fines in accordance with KRS 216.714(1) or (2).

**Section 13. Denial and Revocation.** (1) Initial certification shall be denied if an applicant:

(a) Has a significant financial interest in the entity applying for certification and held a significant financial interest in a personal services agency or health facility licensed pursuant to KRS Chapter 216B in which the agency's certification or facility's licensure was revoked during the three (3) years immediately preceding the filing of the application;

(b) Knowingly misrepresents or submits false information on the application; or

(c) Submits an application which fails to validate the entity's compliance with the requirements of this administrative regulation and KRS 216.712.

(2) Certification shall be revoked if a personal services agency:

(a) Fails to apply for annual recertification pursuant to Section 4(1) of this administrative regulation;

(b) Knowingly misrepresents or submits false information on the application at the time of annual recertification;

(c) Submits an application for annual recertification which fails to validate the agency's compliance with the requirements of this administrative regulation and KRS 216.712;

(d) Fails to comply with the background check and employment requirements of Section 6(2), (3), and (4) of this administrative regulation;

(e) Knowingly retains an employee who is:

1. Found by the cabinet to have abused or misappropriated a client's property; or

2. Convicted of, or pleads guilty, to a crime as defined by KRS 216.710(3);

(f) Fails to submit an acceptable plan of correction or acceptable amended plan of correction pursuant to Section 12(3)(b)2 or (d) of this administrative regulation;

(g) Interferes with a cabinet representative's ability to perform an official duty; or

(h) Provides services that are beyond the scope of personal services as defined by KRS 216.710(7).

(3) Written notice of adverse action shall be provided at least thirty (30) calendar days prior to the effective date of the denial or revocation

(4) The adverse action notice shall:

(a) Explain the reason for the denial or revocation of certification;

(b) Specify that the personal services agency shall cease operation prior to the effective date of the adverse action;

(c) Advise the personal services agency of the right to request an appeal prior to the effective date of the adverse action;

(d) Specify that denial or revocation shall be stayed if an appeal is requested; and

(e) Require the agency to surrender the certificate of operation to OIG when the denial or revocation becomes effective.

**Section 14. Closure of a Personal Services Agency.** If a personal services agency closes voluntarily or as the result of adverse action, the agency shall relinquish to the OIG its certificate to operate as a personal services agency immediately after the effective date of the closure.

**Section 15. Appeals.** (1) A personal services agency that submits a written request for appeal within thirty (30) calendar days of the date the agency receives a notice of adverse action shall be afforded a hearing in accordance with KRS Chapter 13B.

(2) If a hearing officer's final order does not uphold revocation of certification, the personal services agency may resume providing personal services.

Section 16. Incorporation by Reference. (1) "OIG - 1180, Application for Certification to Operate a Personal Services Agency", edition November 2009, is incorporated by reference:

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

KERRY HARVEY, Esq., Acting Inspector General  
JANIE MILLER, Secretary

APPROVED BY AGENCY: November 6, 2009

FILED WITH LRC: November 13, 2009 at 9 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on December 21, 2009 at 9 a.m. in the Health Services Board Room, Health Services Building, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2009, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 4, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, 502-564-2888

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the certification of personal services agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the certification of personal services agencies as mandated by the passage of SB 22 from the 2009 GA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216.710 - 216.716 by establishing standards for the certification of personal services agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting forth the certification requirements for personal services agencies.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation, required by SB 22 from the 2009 GA.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation, required by SB 22 from the 2009 GA.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation, required by SB 22 from the 2009 GA.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation, required by SB 22 from the 2009 GA.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

regulation: This administrative regulation will affect any entity that applies for certification as a personal services agency.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities interested in obtaining certification as a personal services agency will be required to submit an application to the Office of Inspector General (OIG). Upon approval by the OIG, certified personal services agency staff will be required to submit to the following: criminal record checks at the time of initial hire and annually; a check of the nurse aide and home health aide abuse registry at the time of initial hire and annually; a substance abuse test at the time of initial hire; and tuberculosis screening at the time of initial hire and annually. Personal services agencies will be required to provide training to staff and evaluate employee competency. Personal services agencies will also be required to maintain written service plans with clients. (Service plans include the types and schedule of services provided to the client, and the charge per service including the total amount billed to the client.) Personal services agencies will be required to conduct internal investigations of certain grievances made by clients, such as alleged failure to furnish a service listed in the service plan, alleged inappropriate employee conduct, or an allegation that a client's rights have been violated by staff. Additionally, personal services agencies will be subject to on-site inspection by the OIG only upon receipt of a complaint alleging the following noncompliance with the requirements of this administrative regulation or KRS 216.712: possible abuse or neglect of a client, or misappropriation of a client's property by a personal services agency employee; or complaint that an employee has provided services to a client that exceed the scope of personal services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An applicant for initial certification as a personal services agency will be required to pay an initial application fee of \$500 and an annual recertification fee of \$350 annually thereafter. A fee of \$350 will be imposed for a change in an ownership interest of more than 25% of the personal services agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As mandated by SB 22 from the 2009 GA, an entity that demonstrates compliance with this administrative regulation will be approved for certification as a personal services agency.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cabinet anticipates that it will cost approximately \$35,100 during the first year of implementation of the personal services agency certification program. This figure was based on several factors including the number of hours the Office of Inspector General anticipates its survey staff may spend investigating complaints, the number of hours needed for staff to review and process initial certification applications, annual recertification applications, and change of ownership applications, supervisory review, technical assistance, travel costs, postage and supplies, and other indirect costs.

(b) On a continuing basis: Approximately \$35,100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation includes the Kentucky personal services agency fund, which is created by KRS 216.716 and made up of certification fees and fines collected pursuant to KRS 216.712 and 216.714.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation establishes an initial certification fee of \$500 and an annual recertification fee of \$350. A fee of \$350 will be imposed for a change in an ownership interest of more than 25% of the personal services agency.

(8) State whether or not this administrative regulation estab-

lished any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial certification fee of \$500 and an annual recertification fee of \$350. A fee of \$350 will be imposed for a change in an ownership interest of more than twenty-five (25) percent of the personal services agency.

(9) **TIERING:** Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? An entity seeking certification to operate a personal services agency.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.710 - 216.716.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Cabinet anticipates collecting approximately \$37,500 in fees during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Cabinet anticipates collecting approximately \$30,000 in fees during subsequent years.

(c) How much will it cost to administer this program for the first year? The Cabinet anticipates that it will cost approximately \$35,100 during the first year of implementation of the certification program for personal services agencies.

(d) How much will it cost to administer this program for subsequent years? Approximately \$35,100.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Quality Living (New Administrative Regulation)

910 KAR 1:150. Program and certification requirements for the Private Pay Adult Day and Alzheimer's Respite Program.

RELATES TO: KRS Chapter 13B, 194A.060(2), 194A.700(1), (2), (10), 205.010(15), 205.201, 205.455(12), 205.955, 209.030(2), (3), 216.787

STATUTORY AUTHORITY: KRS 194A.050(1), 205.950  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.950 requires the Cabinet for Health and Family Services to promulgate administrative regulations to establish health, safety, and treatment requirements for certified adult day-care centers, and to establish criteria for their certification. This administrative regulation establishes program and certification requirements for the Private Pay Adult Day and Alzheimer's Respite Program.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Adult day-care center" is defined by KRS 205.010(15).

(3) "Adult day-care services" means a supportive and therapeutic social program of supervision and care:

(a) Provided to an eligible adult as defined in Section 2 of this administrative regulation;

(b) During a part of the day, but for less than twenty-four (24) hours, and

(c) For:

1. Assistance with self-administration of medication;
2. Personal care services;
3. Self-care training;
4. Social activities; and
5. Recreational opportunities.

(4) "Adult day health services" means a licensed program to provide continuous supervision of the client's medical and health needs.

(5) "Alzheimer's disease or related dementing diseases" means neurological diseases causing gradual and irreversible impairment of intellectual functioning of a sufficient severity to interfere with an individual's daily activities.

(6) "Assessment" means the collection of information and evaluation about a person's situation and functioning which identifies needs and resources so that a comprehensive plan of care may be developed.

(7) "Assistance with self-administration of medication" is defined by KRS 194A.700(2).

(8) "Identifiable space" means space set apart by visible barriers from other activities within the setting.

(9) "Licensed adult day health center" means a program licensed by the Kentucky Cabinet for Health and Family Services in accordance with 902 KAR 20:066.

(10) "Nutrient dense snack" means a snack that contains a high proportion of nutrients in comparison to the number of calories.

(11) "Personal care services" means activities to help participants achieve and maintain good personal hygiene, including assistance with walking and activities of daily living.

(12) "Plan of care" means a written guide of action:

(a) Developed and agreed upon by the:

1. Client or client's representative; and
  2. The private pay adult day-care center;
- (b) Based upon the client's needs, goals, and resources; and
- (c) Including appropriate services to meet identified goals and achieve objectives.

(13) "Private pay" means funding solely from sources other than state or federal funding.

(14) "Reassessment" means the formal reevaluation of the participant's situation and functioning and of the services delivered to identify changes that may have occurred since the last assessment.

(15) "Respite" is defined by KRS 205.455(12).

Section 2. Eligibility. To participate in the Private Pay Adult Day and Alzheimer's Respite Program, an individual shall be:

(1)(a) Able to respond and share in program activities without creating health and safety risks to self or others; and

(b) An age according to the private pay adult day-care center's policies and procedures but at least eighteen (18) years of age; and

(2) The private pay adult day-care center shall not discriminate eligibility based on a person's race, sex, age, religion, national origin or disability.

Section 3. Assessment and Reassessment. (1) The private pay adult day-care center shall:

- (a) Assess an applicant for eligibility and need of services;
- (b) Develop a plan of care for each eligible applicant:

1. Using a completed assessment; and
2. With participant involvement to the fullest extent of the participant's abilities; and

(c) Refer the client for other needed services identified by the assessment, if applicable.

(2) The program director or designee shall arrange for or conduct a formal reassessment annually or as needed based on change in a client's eligibility or service needs.

Section 4. Private Pay Adult Day-Care Center Fees. A private

pay adult day-care center shall provide a client or client's representative: (1) Written documentation before acceptance to the program of:

- (a) Hourly, weekly, or monthly fees for services; and
- (b) A change in fees within thirty (30) days in advance of the change; and
- (2) Policies and procedures for termination and refund of services.

Section 5. Termination of Services. (1) A private pay adult day-care center or client may decide to terminate adult day-care and Alzheimer's respite services.

(2) If Private Pay Adult Day and Alzheimer's Respite Program services are terminated, the adult day-care center shall:

- (a) Notify the client or client's representative:
  - 1. In writing; and
  - 2. Within five (5) business days of the action taken; and
  - (b) Assist in making a referral to another agency, if applicable.
- (3) Upon discovery of a client being ineligible for services due to health or safety risks as specified in Section 2(1) of this administrative regulation, the private pay adult day-care center shall:
  - (a) Provide notification in writing of termination of services to a client and client's representative; and
  - (b) Assist in making a referral to another agency if requested.

Section 6. Private Pay Adult Day-Care Center Responsibilities.

(1) The private pay adult day-care center shall meet the following general requirements:

- (a) Assure that program staff shall treat the client and caregiver in a respectful and dignified manner, involving them in decisions regarding the delivery of services;
- (b) Assure that services are provided in a safe and consistent manner;
- (c) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;
- (d) Develop and maintain written personnel policies for each job classification;
- (e) Designate a supervisor to assure that staff providing adult day-care services are provided supervision; and
- (f) Notify a client's caregiver or representative should the service needs of the client change due to a change in the client's:
  - 1. Health;
  - 2. Support services; or
  - 3. Family.

(2) The private pay adult day-care center shall establish written policies and procedures to meet the following program requirements for adult day-care center and respite services:

- (a) Post the scheduled days and hours of operation in a conspicuous place and provide a written copy to the client and client's representative;
- (b) Supervise program activities which shall be provided by staff or volunteer personnel meeting staff requirements as set forth in Section 8 of this administrative regulation;
- (c) Provide a balance of planned individual and group activities to meet a client's needs, abilities, and interests as determined by the individual plan of care;
- (d) Provide an inventory of each client's interests and personal history;
- (e) Provide a client with a choice of activities and an opportunity to refuse to participate in the activity;
- (f) Post a monthly calendar of planned activities and available services in a conspicuous place and retain it on site for a minimum of two (2) years for certification purposes;
- (g) Provide assistance, if necessary, with activities of daily living, including:
  - 1. Walking; and
  - 2. Personal hygiene;
- (h) Provide assistance with self-administration of medication;
- (i) Provide a nutritionally-balanced meal if operating during meal time;
- (j) Offer a nutrient dense snack, water, and other liquids at regularly scheduled times during the day;
- (k) 1. Post a monthly calendar of menus in a conspicuous place if meals are provided; and

2. Maintain menus for certification purposes for a minimum of two (2) years;

- (l) Provide first aid and make appropriate arrangements for medical care with the client's physician or hospital for an accident or medical emergency;
- (m) Notify the family or other appropriate person of any significant changes in the client's mental or physical condition;
- (n) Have written complaint procedures that shall:
  - 1. Include the address and phone number of the department;
  - 2. Be posted in a conspicuous place; and
  - 3. Be provided to each client; and
- (o) Have written procedures for reporting abuse, neglect, and exploitation consistent with KRS 209.030(2) and (3).
- (3) An adult day health center shall:
  - (a) Be monitored and licensed by the Office of the Inspector General; and
  - (b) Comply with licensure requirements for adult day health services in accordance with 902 KAR 20.066.

Section 7. Facility Requirements. A Private Pay Adult Day and Alzheimer's Respite Program provider operating a facility for service shall: (1) Comply with requirements outlined in 902 KAR 20.066 for a licensed adult day health center, if offering adult day health services;

(2) Locate, design, and furnish the private pay adult day-care center to be readily accessible to and usable by individuals with disabilities;

(3) Provide sufficient space and arrangements of furnishings to allow for:

- (a) Adequate client movement;
- (b) Program activities;
- (c) Food service; and
- (d) Socialization;
- (4) Provide sufficient private office space to permit individual counseling and confidential maintenance of records;
- (5) Provide appropriate lighting, heating, cooling and ventilation for client comfort and program activities;
- (6) Provide covered leak-proof garbage disposal units for the kitchen;

(7) Equip each private pay adult day-care center with bathroom facilities meeting the following requirements:

- (a) A minimum of one (1) toilet and one (1) sink for each ten (10) clients;
- (b) Readily accessible and usable by individuals with disabilities;
- (c) In men's bathrooms urinals may be substituted for up to one-half (1/2) the number of toilets required; and
- (d) Bathroom facilities that shall:

1. Be cleaned and sanitized daily or more often, if needed which shall be documented by a cleaning log; and

- 2. Contain:
  - a. Hot and cold running water;
  - b. Mirror;
  - c. Soap;
  - d. Towels or electric hand dryers; and
  - e. Leak-proof garbage disposal units that are emptied and cleaned daily;

(8) Comply with applicable local housing and health codes;

(9) Comply with zoning requirements;

(10) Obtain initial and annual inspection by state or local fire safety officials and comply with requirements;

(11) Maintain at least one (1) fully operational fire extinguisher with annually updated inspection tags;

(12) Maintain a fully equipped first aid kit, with unexpired contents, as recommended by the American Red Cross;

(13) Provide identifiable space during hours of operation, for a client in need of a more private environment or rest area; and

(14) Provide separate identifiable space during operational hours, if co-located in a facility housing other services.

Section 8. Program Staff. (1) Staffing requirements for a certified private pay adult day-care center shall include:

- (a) Trained and experienced staff who shall be present each day of operation;

(b) At least two (2) staff members at the private pay adult day-care center at times when there is more than one (1) client in attendance, one (1) of whom shall be a paid staff member;

(c) Staffing ratios that shall be:

1. One (1) staff member if one (1) client is in attendance;

2. Two (2) staff members if two (2) to ten (10) clients are in attendance;

3. Three (3) staff members if eleven (11) to fifteen (15) clients are in attendance; and

4. One (1) additional staff member for each five (5) additional clients over fifteen (15);

(d) Volunteer personnel may be included in the staff ratio, if volunteer personnel meet the staff qualifications and training requirements of this administrative regulation;

(e) At least one (1) staff member who has completed cardiopulmonary resuscitation certification by the American Heart Association or American Red Cross present when clients are in attendance; and

(f) A criminal records check that shall be obtained on a potential employee or volunteer prior to:

1. The employee's date of hire in accordance with KRS 216.787; or

2. Volunteer's start date.

(2) Staff qualifications for programs shall be as follows:

(a) 1. A program director of a private pay adult day-care center shall be:

a. A trained professional possessing:

(i) A minimum of a bachelor's degree in social work, nursing, or a related field relevant to geriatrics and one (1) year professional experience in working with the elderly; or

(ii) A master's degree in social work or a related field relevant to geriatrics and six (6) months professional experience working directly with the elderly;

b. A registered or practical nurse licensed in Kentucky with three (3) years professional experience working directly with the elderly while an employee of a:

(i) Home health agency;

(ii) Long-term care facility;

(iii) Public health agency; or

(iv) Social service agency; or

c. An individual at least twenty-one (21) years of age with:

(i) A high school diploma or GED certificate; and

(ii) A minimum of two (2) years of college with at least three (3) years of professional experience in working directly with the elderly.

2. Professional experience that includes working directly with the elderly while an employee of a public or private health or social service agency may substitute for professional education to equal a minimum of five (5) years.

(b) Administrators of licensed adult day health programs shall meet the requirements of 902 KAR 20:066.

(c) Staff responsible for assessing a participant shall:

1. Have a bachelor's degree or master's degree in social work, gerontology, psychology, sociology, or a field relevant to geriatrics, no experience required;

2. Have a bachelor's or master's degree in nursing with a current Kentucky nursing license, no experience required;

3. Have a bachelor's degree in a field not relevant to geriatrics with two (2) years of paid or volunteer experience in working with the elderly;

4. Be a Kentucky registered nurse with a current Kentucky license and two (2) years of experience working with the elderly; or

5. Be a licensed practical nurse with a current Kentucky license and three (3) years of paid or volunteer experience working with the elderly.

(3) Upon employment, a tuberculosis screening shall be conducted according to current center for Disease Control and Prevention standards and repeated annually thereafter.

(4) Staff or volunteer personnel who contract an infectious disease listed in 902 KAR 2:020 shall not appear at work until:

(a) The infectious disease can no longer be transmitted; and

(b) He or she provides a physician's statement authorizing a return to work.

(5) Training of staff shall be provided by a professional familiar

with the subject matter as follows:

(a) Prior to assuming duties, paid and volunteer personnel shall receive a minimum of six (6) hours of orientation to the program and adult day-care center explained verbally and in writing to include:

1. Program objectives;

2. Program policies and procedures;

3. Health, sanitation, emergency, and safety codes and procedures;

4. Client confidentiality; and

5. Personnel policies and procedures;

(b) Within one (1) month of employment all staff shall be trained and certified in cardiopulmonary resuscitation.

(c) Within three (3) months of employment, staff shall be provided a minimum of thirty-four (34) hours of basic training that includes:

1. The aging process;

2. Interpersonal communications;

3. Personal care services;

4. First aid;

5. Identifying and reporting health problems;

6. Stress management;

7. Recognizing and reporting suspected adult abuse, neglect, or exploitation consistent with KRS 209.030(2) and (3);

8. Universal blood and body fluid precautions;

9. Dementia including:

a. Causes and manifestations of dementia; and

b. Managing a client with dementia;

10. Crisis intervention with a combative client; and

11. Effects of dementia on the caregiver.

(d) A minimum of eight (8) hours of annual training to review and update knowledge and skills shall be provided.

Section 9. Client Records. (1)(a) A client record shall be typed or legibly written in ink with each entry dated and signed by the recorder and including the recorder's title.

(b) Each client record shall be maintained at the program site and contain:

1. A completed assessment;

2. Client notification by letter of acceptance, fees, and the center's days and hours of operation;

3. A monthly summary of the client's:

a. Objectives and goals;

b. Progress; or

c. Other changes or observations noted by program staff;

4. Emergency contact information including responsible party and personal physician;

5. Signed authorization for client to receive emergency medical care, if necessary;

6. Ongoing reassessment and plan of care;

7. Correspondence; and

8. Termination summary.

(2) Licensed day care centers shall maintain records as required by 902 KAR 20:066.

(3) Confidentiality of records and reports shall be in accordance with KRS 194A.060(2).

(4)(a) If both private pay and publicly funded clients attend a center, the client records for the private pay clients shall be maintained in accordance with this regulation.

(b) The records for the publicly funded clients shall be maintained in accordance with 910 KAR 1:160.

Section 10. Certification of Private Pay Adult Day-Care Centers. (1) A private pay adult day-care center shall be certified by the cabinet.

(2) An authorized representative of the department shall have the authority to inspect premises and records required by this administrative regulation and may request assistance from other state agencies upon receipt of a complaint.

(3) Application for certification shall be made by filing a DAIL-ADC-903, Application for Private Pay Adult Day-Care Center Certification, with the Cabinet for Health and Family Services, Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(4)(a) Renewal of certification shall be made biennially.

(b) A renewal application shall be submitted sixty (60) days prior to the expiration date of the current certification.

(5)(a) Compliance with the health, safety, and treatment standards established in this administrative regulation shall be documented on a DAIL-ADC-904, Private Pay Adult Day-Care Center Certification Check List.

(b) Documented compliance shall be confirmed by unannounced inspection pursuant to KRS 205.955 conducted by the department.

(6)(a) Regulatory violations identified during inspection shall be transmitted in writing to the private pay adult day-care center:

1. Within fifteen (15) business days of the inspection; and

2. With a DAIL-ADC-905, Private Pay Adult Day-Care Center Statement of Noncompliance and Plan of Correction.

(b) The private pay adult day-care center shall submit a written plan for the elimination or correction of the regulatory violations to the reviewing agency within fifteen (15) business days of receiving the department's DAIL-ADC-905, Private Pay Adult Day-Care Center Statement of Noncompliance and Plan of Correction.

1. The plan shall specify the dates by which each of the violations shall be corrected.

2. The department shall review the plan and within fifteen (15) days of receipt of the plan of correction:

a. Notify the private pay adult day-care center whether the plan is acceptable or not, in writing;

b. If acceptable, issue a certificate certifying the adult day-care center for a two (2) year period; and

c. If unacceptable, specify the reasons.

3. If the department notifies the adult day-care center that the plan is unacceptable, the center shall amend the plan of correction and resubmit it within fifteen (15) business days.

(7) If the department determines after reviewing the amended plan of correction that certification shall be denied, the department shall, within ten (10) business days of the determination:

(a) Notify the private pay adult day-care center of the determination;

(b) Notify the private pay adult day-care center of the opportunity for an informal dispute resolution meeting between the department and a representative of the private pay adult day-care center to be held within fifteen (15) days of the private adult day-care center's receipt of the notice;

(c) Provide the center with any supporting documentation or materials regarding an issue of noncompliance; and

(d) Notify the private pay adult day-care center of its appeal rights in accordance with Section 11 of this administrative regulation.

**Section 11. Appeal Procedures.** (1) If certification of a private pay adult day-care center has been denied or revoked, the applicant shall be notified in writing of the right to appeal. The department shall send the notice by certified mail within ten (10) days of the determination.

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days, pursuant to KRS 205.950, after receipt of the notice.

(3) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS 13B.120.

(4)(a) If the denial or revocation is upheld by the secretary, the commissioner of the department or representative shall specify the date by which the private pay adult day-care center shall close.

(b) The center shall be notified in writing in accordance with KRS 13B.120(5).

(5) A private pay adult day-care center may appeal a final decision to the circuit court within thirty (30) days after the final order is mailed or delivered, in accordance with KRS 13B.140(1).

**Section 12. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) "DAIL-ADC-903, Application for Private Pay Adult Day-Care Center Certification", edition 2/10;

(b) "DAIL-ADC-904, Private Pay Adult Day-Care Center Certification Checklist", edition 2/10; and

(c) "DAIL-ADC-905, Private Pay Adult Day-Care Center State-

ment of Noncompliance and Plan of Correction, edition 2/10.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DEBORAH S. ANDERSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: November 10, 2009

FILED WITH LRC: November 10, 2009 at 3 p.m.

**PUBLIC HEARING AND COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on December 21, 2009, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business January 4, 2010. Send written notification of intent to be heard at the public hearing or written comments to:

**CONTACT PERSON:** Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge, 564-6930, extension 3432

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Private Pay Adult Day and Alzheimer's Respite Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish health, safety, and treatment requirements and to certify private pay adult day-care centers in accordance with KRS 205.950.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes health, safety, and treatment standards for a certified private pay adult day-care center.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the standards of operation for a certified private pay adult day-care center.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Same as (a).

(c) How the amendment conforms to the content of the authorizing statutes: Same as (a).

(d) How the amendment will assist in the effective administration of the statutes: The same as for (a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There is currently one (1) private pay adult day-care center in Kentucky serving sixteen (16) clients, five (5) Alzheimer's clients, and one (1) brain aneurysm victim. The Department for Aging and Independent Living will be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The private pay adult day-care center will have to comply with the all the health, safety, and treatment

standards of this administrative regulation in order to be certified and operate their center in Kentucky. The Department for Aging and Independent Living will certify a private pay adult day-care center initially and then biannually, thereafter, providing the center complies with the health, safety, and treatment standards of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a \$10 charge per employee and volunteer personnel to obtain criminal records checks through the Administrative Offices of the Court.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The private pay adult day-care centers will benefit by being in compliance with the certification requirements of this administrative regulation in accordance with KRS 205.950(1).

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Implementation of policy is the same statewide.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Aging and Independent Living will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) and 205.950(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is no revenue generated for state or local governments for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There is no revenue generated for state or local governments for subsequent years.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Human Resource Management Division of Employee Management (New Administrative Regulation)

#### 920 KAR 1:090. Client Civil Rights complaint process.

RELATES TO: KRS 18A.095, 194A.005(1), 194A.030(10), 344.010(5), 344.020, 7 C.F.R. 15, 15a, 15b, 15d, 15e, 16, 272.6, 28 C.F.R. 35, 36, 45 C.F.R. 80, 83, 84, 85, 86, 90, 91, 260.34, 260.35, 5 U.S.C. 552a, 7 U.S.C. 2011-2036, 20 U.S.C. 1681, 29 U.S.C. 794, 42 U.S.C. 290dd-1, 300w-7, 300x-57, 608(d), 708, 1996b, 8625, 9918, 10406, 12131-12213, 2000d-2000d-7, 6101-6107, Pub.L. 109-171, 110-246, 110-325, EO 2009-541, Pres. EO 13166

STATUTORY AUTHORITY: KRS 194A.050(1), 344.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 344.015 and the federal grants to the cabinet, inclusive of those funds through the United States Departments of Health and Human Services and Agriculture, require the Cabinet for Health and Family Services to maintain a program atmosphere free from discrimination and to respond to a complaint alleging discrimination. This administrative regulation establishes the client Civil Rights complaint process for programs administered directly by the cabinet or indirectly through a contractual or other arrangement.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1).

(2) "Cabinet program" means a program of service, financial aid, or other benefit administered by the cabinet and provided:

(a) Directly by the cabinet; or

(b) Indirectly by the cabinet through a contractual or other arrangement.

(3) "Client" means a person who:

(a) Applies in writing, electronically, verbally, or through a designated representative for participation in a cabinet program; or

(b) Receives a service, financial aid, or other benefit from a cabinet program.

(4) "Complaint" means a verbal or written allegation of discrimination in the delivery of a cabinet program.

(5) "Complainant" means a person or group of people who alleges discrimination in the delivery of a service, financial aid, or other benefit in a cabinet program.

(6) "Discrimination" is defined by KRS 344.010(5).

(7) "Nutrition program or activity":

(a) Means a cabinet program administered federally by the U.S. Department of Agriculture, Food and Nutrition Services; and

(b) Includes the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program:

1. Defined by 7 U.S.C. 2012, as amended by Pub L. 110-246; and

2. Governed by Title 921 KAR Chapter 3.

(8) "Office of Human Resource Management" or "OHRM" means the major organizational unit of the cabinet established in accordance with KRS 194A.030(10) and EO 2009-541.

(9) "Protected class" means a group of people who qualifies for protection from discrimination under law, policy, or similar authority.

(10) "Retaliation" means an action taken against an individual because the individual participated in a protected activity, such as:

(a) Opposing or reporting a discriminatory practice; or

(b) Participating in or cooperating with an investigation of discrimination.

Section 2. Administrative Policy. (1) The cabinet shall comply with the following federal and state laws prohibiting discrimination:

(a) In a cabinet program:

1. KRS 344.015 and 344.020;



2. 28 C.F.R. 35 or 36;
3. 20 U.S.C. 1681;
4. 29 U.S.C. 794;
5. 42 U.S.C. 12131-12213, as amended by Pub.L. 110-325;
6. 42 U.S.C. 2000d-2000d-7;
7. 42 U.S.C. 6101-6107 or 45 C.F.R. 91;
8. Presidential Executive Order 13166, or
9. Another federal, state, or local law applicable to a cabinet program;

(b) In a nutrition program or activity:

1. 7 C.F.R. 15, 15a, 15b, 15d, 15e, 16, or 272.6; or
2. 7 U.S.C. 2011-2036, as amended by Pub.L. 110-246; or

(c) In a cabinet program funded through the U.S. Department of Health and Human Services:

1. 45 C.F.R. 80, 83, 84, 85, 86, 90, 260.34, or 260.35;
2. 42 U.S.C. 290dd-1, 300w-7, 300x-57, 708, 1996b, 8625, 9918, or 10406; or
3. 42 U.S.C. 608(d), as amended by Pub.L. 109-171.

(2) If a federal or state law specifies or sets a restriction for a cabinet program, such as eligibility for a service, financial aid, or other benefit, the restriction shall take precedence over a protected class under subsection (1) of this section.

**Section 3. Complaint Submission** (1) The Office of Human Resource Management shall provide an internal complaint process to investigate and stop an activity in a cabinet program in accordance with Section 2(1) of this administrative regulation.

(2) An individual shall report a complaint by:

- (a) Submitting a completed and signed CHFS-OHRM-EEO-1, CHFS Client Civil Rights Complaint Form;
  - (b) Submitting a written and signed statement to OHRM, or
  - (c) Verbally reporting a complaint to OHRM, if the individual refuses or declines to place allegations of discrimination in writing.
- (3) The cabinet shall accept an anonymous complaint that provides sufficient information about alleged discrimination in a cabinet program to enable an investigation by OHRM.

(4) Staff of OHRM shall attempt to elicit from a complainant the following:

(a) The name, address, and telephone number or other means of contacting the complainant;

(b) The name of the cabinet program involved in the alleged discrimination and specific location delivering the cabinet program;

(c) 1. The nature of the incident or action that led the complainant to believe that discrimination was a factor; or

2. An example of the method of administration that is having a discriminatory effect on:

- a. The public;
- b. A potential eligible person; or
- c. A client;

(d) The basis on which the complainant believes discrimination or harassment exists, for example:

1. Race;
2. Color;
3. Religion;
4. Sex;
5. National origin;
6. Age;
7. Retaliation;
8. Sexual orientation;
9. Disability;
10. Political beliefs;
11. Sexual harassment; or
12. Limited English proficiency;

(e) The name, telephone number, title, and business or personal address of any other person who may have knowledge of the alleged discrimination;

(f) 1. The date or dates during which the alleged discrimination occurred; and

2. The duration of the alleged discrimination, if it is continuing; and

(g) Recommendation of the complainant to resolve the alleged discrimination.

(5) Staff of OHRM shall document verbal information elicited in accordance with subsection (4) of this section.

(6)(a) No cabinet employee shall:

1. Retaliate against an individual who:

- a. Submits a complaint in accordance with this section; or
- b. Assists in the investigation of a complaint; or

2. Interfere with an investigation of a complaint.

(b) An employee who does not comply with paragraph (a) of this subsection shall be subject to disciplinary action, up to and including dismissal in accordance with KRS 18A.095.

**Section 4. Complaint Acceptance.** (1) Prior to taking action on a complaint, including an investigation, OHRM:

(a) Shall verify the complaint:

1. Indicates a violation of a law specified in Section 2 of this administrative regulation; and
2. Meets minimum reporting requirements established in Section 3 of this administrative regulation;

(b) Shall determine an action plan to address the complaint, including investigative steps; and

(c) May request consultation on the complaint from:

1. The head of the major organizational unit within the cabinet administering the cabinet program involved in the complaint or a designee;

2. The cabinet's Office of Legal Services; or

3. An entity listed in Section 9(1) of this administrative regulation.

(2) If an individual's allegation does not involve discrimination in a cabinet program in accordance with Section 2 of this administrative regulation, OHRM shall:

(a) Refer the individual to the:

1. Cabinet's Office of the Ombudsman;
2. Head of the major organizational unit within the cabinet administering the cabinet program involved in the allegation or a designee; or

3. Another federal, state, or local agency if the agency has jurisdiction over the program involved in the individual's allegation; or

(b) Provide written notice to the individual that no further action or investigation by OHRM is warranted, if the individual provided contact information.

**Section 5. Complaint Processing.** (1)(a) Except for a complaint that alleges discrimination in a nutrition program or activity, OHRM shall provide notice of a complaint's acceptance in accordance with Section 4(1) of this administrative regulation, to the:

1. Complainant, if the complaint includes information in accordance with Section 3(4)(a) of this administrative regulation; and

2. Head of the major organizational unit within the cabinet administering the cabinet program involved in the complaint.

(b) The Office of Human Resource Management shall process a complaint that alleges discrimination in a nutrition program or activity pursuant to Section 6 of this administrative regulation.

(2) In accordance with the complaint's action plan developed pursuant to Section 4(1)(b) of this administrative regulation, OHRM shall:

(a) Conduct an investigation, which may include:

1. Inspection of a cabinet program's records; and
2. An interview with:

- a. A client;
- b. Staff of a cabinet program; or

c. An individual with knowledge of the complaint who is either identified in the complaint or discovered during the course of the investigation; and

(b) Send written notice of the investigation's outcome to the:

1. Complainant, if the complainant provided information in accordance with Section 3(4)(a) of this administrative regulation; and

2. Head of the major organizational unit within the cabinet administering the cabinet program involved in the complaint.

(3)(a) The Office of Human Resource Management shall process a complaint in a cabinet program, subject to this section, within 180 days from the complaint's initial report.

(b) The executive director of OHRM or a designee may grant an extension to the timeframe specified in paragraph (a) of this subsection if OHRM:

1. Requires additional time to determine a complaint's outcome, including investigation of the complaint; and
2. Notifies the complainant who provided information in accordance with Section 3(4)(a) of this administrative regulation of the extension.

Section 6. Processing Complaints in a Nutrition Program or Activity. (1) In accordance with 7 C.F.R. 15 or 272.6, the cabinet shall maintain a separate Civil Rights complaint process for clients under a nutrition program or activity.

(2)(a) If a complaint in a nutrition program or activity is reported and accepted in accordance with Section 4(1) of this administrative regulation, OHRM shall advise the complainant, if known, in writing:

1. That the complaint has been received;
2. Of confidentiality and applications of 5 U.S.C. 552a;
3. Of planned actions, including investigation of the complaint; and

4. If additional information is needed to resolve the issue at the lowest possible level of the cabinet's organizational structure.

(b) If OHRM determines that further investigation of a complaint under a nutrition program or activity is not warranted, OHRM shall provide written explanation to the United States Department of Agriculture, Food and Nutrition Services, Southeast Regional Office

(3) The Office of Human Resource Management shall refer a client complaint of discrimination based on age in a nutrition program or activity to the United States Department of Agriculture, Food Nutrition Service, Southeast Regional Office, within five (5) days of the complaint's initial report.

(4) Unless the United States Department of Agriculture grants an extension, OHRM shall process a complaint in a nutrition program or activity, accepted in accordance with Section 4(1) of this administrative regulation, within ninety (90) days of the complaint's initial report.

(5) An investigation of a complaint in a nutrition program or activity shall consist of:

(a) Contact with the client involved in the alleged discrimination or an authorized representative;

(b) A review of the client's case file;

(c) A review of a sample of case files of similarly situated clients, if the client involved in the alleged discrimination is a client in the Supplemental Nutrition Assistance Program; and

(d) Contact with the major organizational unit within the cabinet that administers the nutrition program or activity for a response to the allegation established in the complaint.

(6) Upon conclusion of any planned action on a complaint under a nutrition program or activity, OHRM shall provide written notice to the complainant, if known, that contains:

(a) The name of the complainant;

(b) A number identifying the complaint;

(c) The date the complaint was reported to OHRM;

(d) The cabinet's jurisdictional authority;

(e) A statement of each allegation and an applicable legal citation from Section 2(1) of this administrative regulation;

(f) The methodology for the investigation of the complaint;

(g) The outcome of the investigation; and

(h) The complainant's right to file a complaint with the Secretary of the United States Department of Agriculture and contact information.

Section 7. Recommendation for Corrective Action. (1) If an investigation's outcome indicates the need for a corrective action by the cabinet program, OHRM shall recommend the corrective action to the major organizational unit within the cabinet administering the cabinet program involved in the complaint.

(2) A recommendation for corrective action may include:

(a) Referral to law enforcement, if a criminal act is suspected;

(b) Technical assistance from a federal or state agency, if the federal or state agency has:

1. Expertise sought by OHRM or the cabinet program; or

2. Jurisdiction over the cabinet program involved in the complaint; or

(c) Disciplinary action against a cabinet employee, up to and

including dismissal in accordance with KRS 18A.095, if the investigation's outcome indicates cause.

Section 8. Withdrawal of a Complaint. (1) A complainant shall submit a written and signed statement to OHRM to:

(a) Request a withdrawal of a complaint; and

(b) State the reason for the withdrawal.

(2) The Office of Human Resource Management shall accept a request for a complaint's withdrawal from a complainant if:

(a) The request shows no sign of coercion, harassment, or another act to compel the complainant to withdraw the complaint; and

(b) The complaint's allegation no longer merits continuing the investigation.

(3) The Office of Human Resource Management shall send written notice to the complainant and the head of the major organizational unit within the cabinet administering the cabinet program involved in the complaint, if OHRM:

(a) Accepts the request for withdrawal; or

(b) Rejects the withdrawal request and proceeds with an investigation or another planned action.

Section 9. Alternative Complaint Processes. (1) In lieu of, or in addition to, the Civil Rights complaint process established in this administrative regulation, a client may elect to file a complaint directly with another entity, such as the:

(a) U.S. Department of Health and Human Services' Office for Civil Rights;

(b) U.S. Department of Agriculture's Office of Assistant Secretary for Civil Rights or Food Nutrition Service Southeast Regional Office;

(c) U.S. Department of Education's Office of Civil Rights;

(d) U.S. Department of Labor's Civil Rights Center;

(e) U.S. Department of Justice's Civil Rights Division;

(f) Kentucky Commission on Human Rights; or

(g) Another federal, state, or local agency with jurisdiction over the cabinet program involved in the alleged discrimination.

(2) Upon request of a client, OHRM shall provide information on filing a complaint with an entity listed in subsection (1)(a) through (g) of this section.

(3) This administrative regulation shall not inhibit an individual's right to seek review through a court of appropriate jurisdiction.

Section 10. Incorporation by Reference. (1) The "CHFS-OHRM-EEO-1, CHFS Client Civil Rights Complaint Form", edition 2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

J. P. HAMM, Executive Director

JANIE MILLER, Secretary

APPROVED BY AGENCY: November 12, 2009

FILED WITH LRC: November 13, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall, if requested, be held on December 21, 2009, at 9 a.m. in the Health Services Board Room, Health Services Building, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2009, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 4, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275

East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood, Internal Policy Analyst IV

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the client Civil Rights complaint process for cabinet programs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish policy and procedure for the cabinet's client Civil Rights complaint process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of a client Civil Rights complaint process for cabinet programs in accordance with legal mandates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes through its establishment of a process for client Civil Rights complaints involving cabinet programs to maintain a program atmosphere free from discrimination.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all cabinet programs and the clients served by them. The cabinet's Office of Human Resource Management accepted 16 reports alleging discrimination in cabinet programs for investigation between September 1, 2008, and September 30, 2009. The cabinet invited the following entities to comment on the draft administrative regulation during its development. Kentucky Commission on the Deaf and Hard of Hearing, Kentucky Commission on Human Rights, U.S. Department of Agriculture, and U.S. Department of Health and Human Services.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with legal mandates, the cabinet is to maintain a program atmosphere free from discrimination. This administrative regulation does not impose any new requirement upon the cabinet or its clients; rather, it formalizes the existing client Civil Rights complaint process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation poses no cost to the cabinet's clients and no new cost to the cabinet.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The client Civil Rights complaint process affords the cabinet and its clients an opportunity to resolve allegations of discrimination at the lowest possible level, and avoid litigation, federal financial penalty or disallowance, and other negative consequences to program integrity and clients. The Cabinet's process is an internal complaint process in addition (and complementary) to external processes.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no new initial costs associated with the amendment to this administrative regulation.

(b) On a continuing basis: There are no new ongoing costs

associated with the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Cabinet programs have various federal and state funding sources. These funding sources could be accessed to support the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation will require no increase in fees or funding. This administrative regulation formalizes the existing client Civil Rights complaint process.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or increase any fees.

(9) TIERING: Is tiering applied? This administrative regulation does not apply tiering. The administrative regulation will be implemented in a like manner statewide.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 15, 15a, 15b, 15d, 15e, 16, 272.6, 28 C.F.R. 35, 36, 45 C.F.R. 80, 83, 84, 85, 86, 90, 91, 260.34, 260.35, 5 U.S.C. 552a, 7 U.S.C. 2011-2036, 20 U.S.C. 1681, 29 U.S.C. 794, 42 U.S.C. 290dd-1, 300w-7, 300x-57, 608(d), 708, 1996b, 8625, 9918, 10406, 12131-12213, 2000d-2000d-7, 6101-6107, Pub.L. 109-171, 110-246, 110-325, Exec. Order No. 13166

2. State compliance standards. KRS 194A.050(1), 344.015

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 15, 15a, 15b, 15d, 15e, 16, 272.6, 28 C.F.R. 35, 36, 45 C.F.R. 80, 83, 84, 85, 86, 90, 91, 260.34, 260.35, 5 U.S.C. 552a, 7 U.S.C. 2011-2036, 20 U.S.C. 1681, 29 U.S.C. 794, 42 U.S.C. 290dd-1, 300w-7, 300x-57, 608(d), 708, 1996b, 8625, 9918, 10406, 12131-12213, 2000d-2000d-7, 6101-6107, Pub.L. 109-171, 110-246, 110-325, Pres. Exec. Order No. 13166

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This question is not applicable.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The programs of the Cabinet for Health and Family Services will be impacted by this administrative regulation. The cabinet's Office of Human Resource Management will be charged with the processing of client Civil Rights complaints.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 344.015, 7 C.F.R. 15, 15a, 15b, 15d, 15e, 16, 272.6, 28 C.F.R. 35, 36, 45 C.F.R. 80, 83, 84, 85, 86, 90, 91, 260.34, 260.35, 5 U.S.C. 552a, 7 U.S.C. 2011-2036, 20 U.S.C. 1681, 29 U.S.C. 794, 42 U.S.C. 290dd-1, 300w-7, 300x-57, 608(d), 708, 1996b, 8625, 9918, 10406, 12131-12213, 2000d-2000d-7, 6101-6107, Pub.L. 109-171, 110-246, 110-325, Presidential Exec. Order No. 13166.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? This administrative regulation will generate no new revenue for the state or local government in its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new costs to administer these services for its first year. The cabinet has been subject to these federal and state mandates as a result of its applications for funding and service as the state-administrating agency for various programs. This administrative regulation formalizes the existing client Civil Rights complaint process.

(d) How much will it cost to administer this program for subsequent years? There will be no new costs to administer these services for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Child Care**  
**(New Administrative Regulation)**

**922 KAR 2:020. Child Care Assistance Program (CCAP)**  
**Improper payments, claims, and penalties.**

RELATES TO: KRS Chapter 13B, 45.237-45.241, 194A.060, 45 C.F.R. 98, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 45.237(4), 194A.050(1), 199.8994, 45 C.F.R. 98.60(i)

NECESSITY, FUNCTION, and CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. 45 C.F.R. 98.60(i) and KRS 45.237(4) require the cabinet, as the lead agency for Kentucky, to recover child care payments that are the result of fraud or improper payment. This administrative regulation establishes procedures for improper payments, claims, and penalties used by the cabinet in the administration of the Child Care Assistance Program (CCAP).

Section 1. Definitions. (1) "Agency error" means an error on the part of the cabinet or its designee.

(2) "Cabinet" means the Cabinet for Health and Family Services or its designee.

(3) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of 922 KAR 2:160, with the financial resources to find and afford quality child care.

(4) "Child care provider" means the individual, business, or business proprietor who is receiving, or has received, payment for child care services under CCAP.

(5) "Claim" means an amount owed to the cabinet as a result of an overpayment of CCAP.

(6) "Claimant" means a current or former CCAP recipient or child care provider subject to a claim.

(7) "Compromise a claim" means accepting less than the full value of a claim.

(8) "Intentional program violation" or "IPV" means a CCAP recipient or child care provider having intentionally

(a) Made a false or misleading statement; or

(b) Misrepresented, concealed, or withheld facts.

(9) "Hearing officer" is defined by KRS 13B.010(7).

(10) "Improper payment" is defined by KRS 45.237(1)(d) or 45 C.F.R. 98.100(d).

(11) "Inadvertent error claim" means an overpayment resulting from a misunderstanding or unintended error on the part of a recipient or a child care provider.

(12) "Overpayment" means a CCAP payment which exceeded the amount a CCAP recipient or a child care provider was eligible to receive.

(13) "Recipient" means a family who has been found eligible for CCAP.

(14) "Terminate a claim" means ceasing all collection actions on a claim.

(15) "Underpayment" means a payment which was less than the amount a recipient or a child care provider was eligible to receive.

Section 2. Responsibility for a Claim. (1) A parent of a recipient household or a child care provider shall be responsible for paying a claim which resulted from an:

(a) Overpayment due to an action or inaction on the part of the recipient or the child care provider, including failure to report a change in circumstance in accordance with 922 KAR 2:160, Section 11; or

(b) Agency error that provided the recipient or the child care provider with an overpayment.

(2) The cabinet shall make an exception to subsection 1(b) of this section if the recipient:

(a) Is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and

(b) Complied with the requirements of the recipient's:

1. Case plan developed in accordance with 922 KAR 1:430; or
2. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR 2:370.

Section 3. Claim Category. (1) A claim shall be classified in one (1) of the following three (3) categories:

- (a) A claim resulting from an IPV;
- (b) Inadvertent error claim; or
- (c) Agency error claim.

(2) The cabinet shall establish an IPV against a recipient or a child care provider if:

(a) A court of appropriate jurisdiction issues a conviction related to an IPV in CCAP against a parent of the recipient household or the child care provider;

(b) A parent of the recipient household or a child care provider completes, signs, and returns the:

1. DCC-84 Supplement A, Voluntary Waiver of Administrative Disqualification Hearing; or
2. DCC-83, Deferred Adjudication Disqualification Consent Agreement; or

(c) A hearing officer or an agency head makes a determination finding an IPV as a result of an administrative disqualification hearing.

Section 4. Action on an Improper Payment. (1) The cabinet shall investigate each:

- (a) Instance of an improper payment; or
- (b) Allegation of an IPV related to a:

1. Recipient; or
2. Child care provider.

(2) The cabinet shall initiate action to correct an improper payment in a CCAP case.

(3) If an overpayment has occurred, the cabinet shall:

(a) Determine the amount of overpayment in accordance with Section 5 of this administrative regulation; and

(b) Categorize and establish a claim to recover the amount of the overpayment.

(4) If the cabinet has sufficient documentary evidence to substantiate that a recipient or child care provider has committed an IPV, the cabinet shall:

(a)1. Refer the case to the cabinet's Office of Inspector General (OIG) for investigation or referral for prosecution if warranted by

the facts of the case;

2. Initiate an administrative disqualification hearing in accordance with Section 9 of this administrative regulation; or

3. Accept a parent of a recipient household or a child care provider's waiver of an administrative disqualification hearing through the parent or child care provider's completing, signing, and returning a DCC-84 Supplement A; and

(b) Take an action necessary to establish a claim to collect any overpayment resulting from the suspected IPV.

Section 5. Calculating a Claim. (1) The cabinet shall calculate the amount of an overpayment for an:

(a) Agency error back to the month that the error first occurred, but not more than twelve (12) months prior to the date that the cabinet became aware of the overpayment;

(b) Inadvertent error back to the month that the misunderstanding or error first occurred, but not more than three (3) years prior to the date that the cabinet became aware of the overpayment; and

(c) IPV back to the month of the fraudulent act first occurred, but not more than five (5) years prior to the date that the cabinet became aware of the overpayment.

(2) If an overpayment occurred as a result of a change during the period of CCAP eligibility, the first day of the claim shall begin thirty-one (31) days from the date of the change.

(3) If the overpayment occurred due to the failure of a parent of a recipient household to report information at application or redetermination for eligibility in accordance with 922 KAR 2:160, Section 2 or 8, the claim shall start the first day of the approval of the application or redetermination.

(4)(a) The cabinet shall:

1. Calculate the amount of CCAP for each month that a recipient or a child care provider received the improper payment; and

2. Subtract the correct amount of CCAP from the CCAP actually received.

(b) The difference shall be the amount of the overpayment.

(5) If the overpayment exists for the entire period of CCAP eligibility, the cabinet shall calculate the full amount of benefits overpaid:

(a) On behalf of the recipient; or

(b) To the child care provider.

(6) If an overpayment and an underpayment exist for a recipient or a child care provider, the amounts of the overpayment and the underpayment shall be offset to determine the total amount of the claim.

(7) The amount of a claim may differ from a calculation obtained through the methods outlined in this section if a different claim amount is ordered by:

(a) An administrative hearing officer or agency head in accordance with 922 KAR 1:320; or

(b) A court of appropriate jurisdiction.

Section 6. General Claim Notices. (1) A KCD-2, General Claims Notice, shall serve many purposes in the administration of CCAP claims collections, including the use as:

(a) An appointment letter;

(b) A demand letter;

(c) A notification of benefit reduction;

(d) A past due notice;

(e) A repayment agreement;

(f) A claim adjustment notice;

(g) A claim termination notice;

(h) A payment receipt;

(i) Notice of a claim being paid in full; or

(j) Notice of a delinquent claim's referral for collection in accordance with Section 11(2) of this administrative regulation.

(2) The language on the KCD-2 shall differ according to the purpose of the notice as described in subsection (1) of this section.

Section 7. Notification of a Claim. (1) The cabinet shall:

(a) Provide initial notice in accordance with Section 6 of this administrative regulation to a recipient or a child care provider suspected of having a claim;

(b) Provide notice of a suspected IPV, if applicable, with a:

1. DCC-84, Notice of Suspected Intentional Program Violation;

and

2. DCC-84 Supplement A; and

(c) Offer the recipient or the child care provider an opportunity to meet with the cabinet to:

1. Discuss the potential claim;

2. Determine the category of the claim as specified in Section 3 of this administrative regulation; and

3. Sign the DCC-84 Supplement A, if an IPV is suspected.

(2) If a recipient or a child care provider requests to reschedule the meeting within ten (10) days of the date of the notice provided in accordance with subsection (1) of this section, the cabinet shall reschedule the meeting.

(3) The cabinet shall determine the claim's category in accordance with Section 3 of this administrative regulation and the amount of the claim based on the information available to the cabinet if the recipient or the child care provider:

(a) Fails to attend the meeting to discuss the claim; and

(b) Does not contact the cabinet to reschedule the meeting in accordance with subsection (2) of this section.

(4) If the cabinet determines the category and amount of a claim in accordance with subsections (1) through (3) of this section:

(a) Collection shall be initiated in accordance with Section 10 of this administrative regulation; and

(b) Subsequent notice pursuant to Section 6 of this administrative regulation shall be mailed to the recipient or the child care provider to give the claim:

1. Amount;

2. Time period;

3. Reason; and

4. Classification in accordance with Section 3 of this administrative regulation.

(5) A recipient or a child care provider shall return the notice made pursuant to subsection (4)(b) of this section within ten (10) days of receipt if the recipient or child care provider chooses to request an administrative hearing on the establishment of the claim in accordance with Section 18 of this administrative regulation.

Section 8. Disqualification Period. (1) A recipient or a child care provider determined to have committed an IPV in accordance with Section 3(2) of this administrative regulation shall have a period of disqualification from CCAP pursuant to subsection (2) of this section.

(2)(a) A disqualification period from CCAP shall adhere to the following guidelines:

1. Three (3) months disqualification for a first occurrence of IPV;

2. Six (6) months disqualification for a second occurrence of IPV; and

3. Permanent disqualification for a third occurrence of IPV.

(b) The cabinet shall make an exception to paragraph (a) of this subsection if:

1. The recipient is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and

2. CCAP is necessary for the recipient to comply with the requirements of the recipient's:

a. Case plan developed in accordance with 922 KAR 1:430; or

b. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR 2:370.

(3) If a court of appropriate jurisdiction issues a disqualification period upon conviction of a charge related to the IPV, the cabinet:

(a) May make exception to a disqualification period specified in subsection (2) of this section; and

(b) Shall enforce the court-ordered disqualification period.

(4) Unless subsection 2(b) of this section applies, the disqualification period shall continue uninterrupted until it is completed regardless of the eligibility of the recipient or the child care provider.

(5) Regardless of the disqualification period, the recipient or the child care provider shall continue to be responsible for the payment of a claim resulting from the IPV.

(6) Eligibility of a recipient or payment to a child care provider shall not be affected by a suspected IPV until a disqualification is established in accordance with subsection (1) of this section.

(7) If a court of appropriate jurisdiction fails to impose a disqualification period for an IPV, the cabinet shall impose a penalty in accordance with this section.

(8) The cabinet shall not separate the same act of IPV repeated over a period of time for the imposition of multiple, separate penalties.

**Section 9. Administrative Disqualification Hearing.** (1) The cabinet shall initiate an administrative disqualification hearing on the establishment of an IPV if the:

(a) Facts of the IPV do not warrant civil or criminal prosecution through a court of appropriate jurisdiction;

(b) Referral for prosecution is declined by prosecutorial authorities;

(c) Referral for prosecution is withdrawn by the cabinet; or

(d) Recipient or child care provider declines to sign the DCC-84 Supplement A.

(2) If the facts of the case arise out of the same or related circumstances, the cabinet shall not initiate an administrative disqualification hearing against a recipient or a child care provider:

(a) Whose case is currently referred for prosecution; or

(b) Subsequent to an action taken against the recipient or the child care provider by the prosecutor or a court of appropriate jurisdiction.

(3) Unless a different procedure is specified in this section, an administrative disqualification hearing shall:

(a) Be conducted in accordance with 922 KAR 1:320 and KRS Chapter 13B; and

(b) Include:

1. The issuance of a recommended order;

2. Procedures for written exceptions; and

3. The issuance of a final order.

(4) The cabinet may initiate an administrative disqualification hearing regardless of the current eligibility of a recipient or the payment status of a child care provider.

(5)(a) In accordance with KRS 13B.050, an administrative disqualification hearing notice shall be sent:

1. By certified mail;

2. To the addressee only; and

3. With a return recipient requested.

(b) An administrative disqualification hearing notice shall provide information in accordance with KRS 13B.050.

(6) Timeframes for an administrative disqualification hearing shall be in accordance with KRS 13B.110 and 13B.120.

(7)(a) The cabinet shall combine a request for an administrative hearing in accordance with Section 16 of this administrative regulation and an administrative disqualification hearing into a single hearing if the:

1. Factual issues arise out of the same or related circumstances; and

2. Recipient or the child care provider receives prior notice that the hearings are being combined.

(b) If the hearings are combined for the purpose of settling the amount of the claim concurrent with a determination of whether an IPV occurred, the recipient or the child care provider subject to the claim shall lose the right to a subsequent administrative hearing on the amount of the claim.

(8) During an administrative disqualification hearing, the hearing officer shall advise the recipient or child care provider accused of an IPV of the option to refuse to answer questions during the hearing.

(9)(a) In accordance with KRS 13B.080(6), if a recipient or child care provider does not appear for the administrative disqualification hearing, the hearing officer shall review the case file to determine if the hearing shall:

1. Proceed without recipient or child care provider representation because the return receipt from the hearing notice verified the notice was received by the recipient or the child care provider; or

2. Not be conducted because the hearing notice or return receipt is annotated as unclaimed or undeliverable.

(b) The cabinet shall conduct a new administrative disqualification hearing if the:

1. Recipient or the child care provider was not represented at the hearing;

2. Recipient or the child care provider was determined to have committed an IPV; and

3. Hearing officer determined the household had good cause, in accordance with 922 KAR 1:320, Section 6(7), for not appearing.

(10)(a) The determination of an IPV made through an administrative disqualification hearing shall not be reversed by a subsequent administrative hearing decision.

(b) A recipient or child care provider shall be entitled to seek relief through a court of appropriate jurisdiction in accordance with KRS 13B.140.

**Section 10. Collection of a Claim.** (1) The cabinet shall collect a claim from a claimant through:

(a) Voluntary payment arrangement, negotiated either orally or in writing, which includes a payment schedule;

(b) Court-ordered repayment;

(c) State tax refund interception in accordance with KRS 45.238;

(d) Lottery offsets;

(e) Wage garnishment; or

(f) Referral to a collection agency.

(2)(a) The cabinet shall accept a lump sum payment on a claim from a recipient or a child care provider.

(b) The lump sum payment may be a full or partial payment.

(3)(a) If a claimant who is a child care provider submits a completed DCC-97 Supplement A, Voluntary Payment Reduction, indicating the amount the provider wishes to have applied to the claim, the child care provider currently receiving CCAP payment may choose to have an amount withheld from the provider's CCAP payment to be applied towards a claim.

(b) The amount indicated on the DCC-97 shall not be less than ten (10) percent of the total CCAP payment.

(4) The cabinet shall refund to a claimant any amount the claimant pays in excess of the amount of the claim.

**Section 11. Delinquent Claims.** (1) In accordance with KRS 45.237(4), a claim shall be considered delinquent if:

(a) A claimant has not made a payment or entered into a satisfactory payment arrangement with cabinet sixty (60) calendar days from the date on the notice provided in accordance with Section 7(4)(b) of this administrative regulation; or

(b) Sixty (60) days have lapsed since the claimant has missed a scheduled payment pursuant to the payment arrangement with the cabinet.

(2) The cabinet shall pursue collection on a delinquent claim through a collection method specified in Section 10(1)(b) through (f) of this administrative regulation.

(3)(a) If the cabinet determines that a claimant who is a recipient is delinquent on a payment in accordance with subsection (1) of this section for ninety (90) days, the cabinet shall:

1. Terminate the recipient's CCAP; and

2. Not reapprove the recipient for CCAP until the recipient has paid two (2) months of delinquent payments.

(b) The cabinet shall make an exception to paragraph (a) of this subsection if:

1. The recipient is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and

2. CCAP is necessary for the recipient to comply with the requirements of the recipient's:

a. Case plan developed in accordance with 922 KAR 1:430; or

b. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR 2:370.

(4) If the cabinet determines that a claimant who is a child care provider is delinquent on a payment in accordance with subsection (1) of this section for ninety (90) days, the cabinet shall:

(a) Disallow any CCAP payments to the child care provider; and

(b) Not approve the child care provider for further CCAP payments until the provider has paid two (2) months of delinquent payments.

(5) The cabinet shall provide notice in accordance with Section 6 of this administrative regulation prior to an action specified in subsection (3) or (4) of this section.

(6) If the cabinet is unable to determine a claim's delinquency

status because the claim collection is coordinated through the court system, the cabinet shall not subject a claim to the requirements for delinquent debts in accordance with this section.

(7) A claim shall not be considered delinquent if:

(a) Another claim for the same claimant is currently being paid through a repayment agreement or court order; and

(b) The cabinet expects to begin collection on the claim once the prior claim is settled.

(8)(a) A claim awaiting an administrative hearing shall not be considered delinquent.

(b) If a hearing officer or agency head determines that a claim does exist as result of an administrative hearing, the cabinet shall:

1. Send subsequent notice of the claim in accordance with Section 6 of this administrative regulation; and

2. Base delinquency on the due date of the subsequent notice.

(c) If a hearing officer or agency head determines that a claim does not exist as a result of an administrative hearing, the cabinet shall terminate the claim in accordance with Section 12(2) of this administrative regulation.

**Section 12. Compromising or Terminating a Claim.** (1) Except for a claim that is established by a court of appropriate jurisdiction, the cabinet may compromise a claim or a portion of a claim if:

(a) A request for a compromise is received from the claimant; and

(b) The cabinet makes a determination that the claimant will be unable to pay the claim within five (5) years.

(2) The cabinet shall terminate a claim if the:

(a) Claim:

1. Is invalid, unless pursuing the overpayment as a different type of claim is appropriate;

2. Balance is twenty-five (25) dollars or less, and the claim has been delinquent for ninety (90) days or more, unless another claim is pending against the same claimant resulting in an aggregate claim total of greater than twenty-five (25) dollars; or

3. Has been delinquent for at least three (3) years;

(b) Claimant dies; or

(c) Cabinet is unable to locate the claimant.

(3) The cabinet shall provide notice in accordance with Section 6 of this administrative regulation if the cabinet:

(a) Compromises or terminates a claim; and

(b) Has a mailing address for the claimant.

**Section 13. Underpayments and CCAP Restoration.** (1) If an underpayment has occurred, the cabinet shall issue a payment to the child care provider that includes the difference between the amount that the child care provider:

(a) Was entitled to receive; and

(b) Actually received.

(2) CCAP shall be restored for no more than twelve (12) months to a recipient or a child care provider if benefits were lost:

(a) Due to an agency error; or

(b) By a disqualification period for an IPV that is subsequently reversed through an order of a court of appropriate jurisdiction.

**Section 14. Disclosure of Information.** The disclosure or the use of CCAP information shall be restricted in accordance with KRS 194A.060.

**Section 15. Retention of Records.** (1) Records for CCAP shall be retained in accordance with 45 C.F.R. 98.90(e).

(2) The cabinet shall retain:

(a) The official records of an administrative disqualification hearing until all appeals have been exhausted; and

(b) A CCAP record with an IPV disqualification indefinitely.

**Section 16.** A parent in the recipient household or a child care provider may request an appeal of the establishment of a claim in accordance with 922 KAR 1:320, Section 2(10).

**Section 17. Incorporation by Reference.** (1) The following material is incorporated by reference.

(a) "DCC-83, Deferred Adjudication Disqualification Consent Agreement", edition 11/09;

(b) "DCC-84, Notice of Suspected Intentional Program Violation", edition 11/09;

(c) "DCC-84 Supplement A, Voluntary Waiver of Administrative Disqualification Hearing", edition 11/09;

(d) "DCC-97 Supplement A, Voluntary Payment Reductions", edition 11/09; and

(e) "KCD-2, General Claims Notice", edition 11/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 am through 4:30 pm. 922 KAR 2:020

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: November 9, 2009

FILED WITH LRC: November 9, 2009 at 11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on December 21, 2009, at 9 a.m. in the Health Services Board Room, Health Services Building, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2009, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business January 4, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for claims, collections, and penalties used by the cabinet in the administration of the Child Care Assistance Program (CCAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish policies and procedures for the handling of improper payments, whether that is an overpayment or underpayment; claims; collections; intentional program violations that may or may not also include an overpayment; and penalties in CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes governing the management of improper payments by state agencies and federal regulations and guidelines for the administration of fund under the Child Care and Development Fund Block Grant, the funding source for CCAP, through the administrative regulation's establishment of the criteria for claims, collections, and penalties used by the cabinet in the administration of the Child Care Assistance Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of all child care funds in a manner which is consistent with federal requirements, state statutes governing improper payments and program administration, and the interests of the clients to be served, child care providers, and taxpayers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative



regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 42,000 children who are benefiting from CCAP on any one day. There are 2,412 licensed child care providers, 778 certified child care providers, and 2,042 registered child care providers who serve children receiving CCAP benefits. The parent of a child eligible for CCAP or a provider serving a child eligible for CCAP could be impacted by this administrative regulation if an overpayment or underpayment or a suspected intentional program violation has occurred involving the child's case/eligibility or payment to the child care provider.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. This administrative regulation will require a CCAP recipient household (i.e., parent) or child care provider to repay overpayments and be subject to a disqualification period if either the recipient household or child provider is found to have committed an intentional program violation (i.e., fraud). The administrative regulation includes a balance amongst fraud prevention or deterrent measures, agency requirements concerning improper payments, and potential adverse actions to the recipient household or child care provider, to ensure adequate due process and safeguards for children who are determined to be at-risk of child abuse or neglect or whose parents are subject to participation requirements under the Kentucky Works Program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Unless a CCAP recipient household or child care provider has received an overpayment that is not excluded from the establishment of a claim, a recipient household or child care provider will be required to enter into a payment arrangement with the cabinet or will be subject to collection methods if the recipient household or child care provider has been found to have received an overpayment. Otherwise, there are no known costs to a recipient household or child care provider as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to CCAP recipient households include reduced fraud in CCAP and correction of underpayments. Overpayments returned to CCAP will be utilized to support new or existing recipients.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The administrative regulation is anticipated to be cost neutral or cost saving due to reductions in fraud and correction of improper payments. At present, no new administrative hearing officer is necessary to extend administrative hearing or administrative disqualification hearing rights to CCAP recipients.

(b) On a continuing basis: The administrative regulation is anticipated to be cost neutral or cost saving due to reductions in fraud and correction of improper payments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation is the federal Child Care and Development Fund (CCDF) Block Grant.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation requires no increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because

this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98

2. State compliance standards. KRS Chapter 13B, 45.237-45.241, 194A.050(1), 194A.060, 199.8994.

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This question is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 45.237-45.241, 194A.050(1), 194A.060, 199.8994, 45 C.F.R. 98

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for state or local government in its first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation is anticipated to be cost neutral or cost saving due to reductions in fraud and correction of improper payments.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation is anticipated to be cost neutral or cost saving due to reductions in fraud and correction of improper payments.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## TECHNICAL AMENDMENT REPRINT

This technical amendment is being printed because the word "not" was inadvertently deleted from Section 4(4). Section 4(4) now reads: (4) A discharge that is not regulated by the U.S. EPA under the Clean Water Act Section 402, 33 U.S.C. 1342.

## TECHNICAL AMENDMENT

401 KAR 5:055

(Effective 9-25-2009)

## 401 KAR 5:055. Scope and applicability of the KPDES Program.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.70-100, 224.70-120, 224.99-010, 33 C.F.R. 153, 40 C.F.R. 122, 123.44, 144, 300, 401.15, 33 U.S.C. 1251 -1387, 42 U.S.C. 300f - 300j, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.18-100, 224.70-100, 40 C.F.R. 122.21, 300, 33 U.S.C. 1251 -1387

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to require for persons discharging into the waters of the Commonwealth, by administrative regulation, technological levels of treatment and effluent limitations. KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 - 1387 subject to the conditions imposed in 33 U.S.C. 1342(b) and (d). KRS 224.16-050(1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a). KRS 224.16-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement or other condition that is more stringent than the effluent limitation, monitoring requirement or other condition that would have been applicable under the federal regulation if the permit was issued by the federal government. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes the scope and applicability of the KPDES program and identifies categories of point sources required to obtain a KPDES permit, requirements pertaining to exclusions and prohibitions, requirements for general permits, requirements for disposal into wells and into publicly-owned treatment works (POTW), and requirements for disposal by land application.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of federal regulations that are cited within this administrative regulation.

Section 2. Applicability of the KPDES Requirements. (1) A KPDES permit shall be required to discharge pollutants from a point source into waters of the Commonwealth.

(2) Compliance with the KPDES program requirements shall constitute compliance with the operational permit requirements of 401 KAR 5:005.

(3) Failure to obtain a KPDES permit shall not relieve a discharger whose discharge is subject to the KPDES program from complying with the applicable performance standards of the KPDES program, 401 KAR 5:050 through 5:080.

Section 3. Point Source Categories Requiring a KPDES Permit. (1) The following categories of point sources shall require a KPDES permit to discharge:

- (a) A point source discharge identified in 40 C.F.R. 122, effective July 1, 2008,
- (b) A concentrated animal feeding operation;
- (c) A concentrated aquatic animal production facility;
- (d) A discharge into aquaculture projects;
- (e) A discharge from separate storm sewers; and
- (f) A silviculture point source

(2) A facility covered by a general permit issued pursuant to Section 8 of this administrative regulation, may be required to obtain an individual permit based on contributions to water pollution.

(3) If an individual permit is required pursuant to this section, except as provided in subsection (4) of this section, the cabinet shall notify the discharger of that decision and the reasons for it.

(a) The discharger shall apply for a permit pursuant to 401 KAR 5:060 within sixty (60) days of notice, unless an extension is requested by the applicant.

(b) The question whether the permit determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

(4)(a) Prior to a determination that an individual permit shall be required for a storm water discharge, the cabinet may require the discharger to submit information regarding the nature of the discharge as established in 40 C.F.R. 122.21(e), effective July 1, 2008, if:

1. The provisions of the general permit are not sufficient to protect human health and the environment; or

2. The discharger has a history of noncompliance with the provisions of the general permit.

(b) If an individual permit is required pursuant to this section, the cabinet shall notify the discharger of that decision and the reasons for it.

(c) The discharger shall apply for a KPDES permit within sixty (60) days of notice, unless an extension is requested by the applicant.

(d) The question whether the initial determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

Section 4. Exclusions. An exclusion from the requirement to obtain a KPDES permit shall be:

(1) A discharge identified in 40 C.F.R. 122.3, effective July 1, 2008, or KRS 224.16-050(6);

(2) An authorization by permit or by rule that is prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f-300j, and that are issued under a state or federal Underground Injection Control program;

(3) An underground injection control well that is permitted pursuant to 40 C.F.R. 144 if those permits are protective of public health and welfare and prevent the pollution of ground and surface waters; or

(4) A discharge that is not regulated by the U.S. EPA under the Clean Water Act Section 402, 33 U.S.C. 1342.

Section 5. Prohibitions. The cabinet shall not issue a KPDES permit if:

(1) The conditions of the permit would violate the provisions of KRS Chapter 224;

(2) The regional administrator has objected to issuance of the permit in writing pursuant to the procedures specified in 40 C.F.R. 123.44, effective July 1, 2008;

(3) The conditions of the permit do not comply with the water quality standards established in 401 KAR 10.031; or

(4) A prohibition is established in 40 C.F.R. 122.4, effective July 1, 2008.

Section 6. Variance Requests from Technology-based Effluent Limitations. (1) A non-POTW may request a variance from otherwise applicable effluent limitations as established in 40 C.F.R. 122.21(m), effective July 1, 2008.

(2) A non-POTW may request an expedited variance as established in 40 C.F.R. 122.21(o), effective July 1, 2008.

Section 7. Effect of a Permit. The effect of a KPDES permit shall be as established in 40 C.F.R. 122.5, effective July 1, 2008.

Section 8. A General permit shall be issued as established in 40 C.F.R. 122.28, effective July 1, 2008.

Section 9. Disposal of Pollutants into Underground Injection Control Wells, into Publicly Owned Treatment Works, or by Land Application. (1) An adjustment of effluent limitations related to disposal of pollutants into wells, into publicly owned treatment works, or by land application shall be as established in 40 C.F.R. 122.50, effective July 1, 2008.

(2) The cabinet may issue permits to control the disposal of pollutants into wells if necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.

Section 10. Variances from Technology-Based Treatment Requirements Available to KPDES Applicants. Consistent with KRS 224.16-050, the variance provisions in this section and in 401 KAR 5:080, Sections 2 and 4, establish those variances from technology-based requirements available to KPDES applicants.

(1) Economic capability. The cabinet, with the concurrence of U.S. EPA, may modify BAT requirements for a point source if the owner or operator demonstrates that the variance satisfies the requirements of 33 U.S.C. 1311(c).

(2) Environmental considerations. The cabinet, with the concurrence of U.S. EPA, may modify the BAT requirement for a point source that does not discharge toxic pollutants identified in 40 C.F.R. 401.15, effective July 1, 2008, conventional pollutants, or the thermal component of that discharge, if the owner or operator demonstrates that the modification is consistent with the conditions established in 33 U.S.C. 1311(g).

(3) Innovative technology. The cabinet shall establish a date for complying with the deadline for achieving BAT not later than two (2) years after the date for compliance with the effluent limitation would otherwise be applicable, if the innovative technology is as established in 33 U.S.C. 1311(k).

(4) Thermal pollution. An alternative effluent limitation for the thermal component of a discharge shall be as established in 33 U.S.C. 1326(a).

Section 11. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" if the authority to administer the federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the cabinet has been delegated authority to implement federal regulations cited in Sections 1 through 10 of this administrative regulation.

(4) "Standard metropolitan statistical areas as defined by the University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget" shall be substituted for "Standard metropolitan statistical areas as defined by the Office of Management and Budget" in 40 C.F.R. 122.28(a)(1)(vi).

(5) "Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census" shall be substituted for "Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202, effective May 1, 1974" in 40 C.F.R. 122.28 (a)(1)(vi). (9 Ky.R. 854; Am. 1103; 10 Ky.R. 9; eff. 6-1-83; 11 Ky.R. 740; 1028; eff. 1-7-85; 12 Ky.R. 511; eff. 12-10-85; 13 Ky.R. 241; eff. 9-4-86; 20 Ky.R. 3231; 21 Ky.R. 364; eff. 8-24-94; 29 Ky.R. 1031; 1545; eff. 12-18-02; TAm eff. 8-9-2007; 35 Ky.R. 2520; 36 Ky.R. 364; 575; eff. 9-25-2009.)

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of November 10, 2009**

The November meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, November 10, 2009 at 1:00 p.m., in Room 154 of the Capitol Annex. Senator Elizabeth Tori, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the October 2009 meeting were approved.

Present were:

**Members:** Senators Joey Pendleton, Alice Forgy Kerr and Elizabeth Tori and Representatives Leslie Combs, Danny Ford, and Jimmie Lee.

**LRC Staff:** Dave Nicholas, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, Emily Caudill, Jennifer Beeler, and Laura Napier.

**Guests:** Joe Cowles, Personnel Cabinet; Jim Grawe, Board of Chiropractic Examiners; Jay Davidson, Margaret Haxlette, Kentucky Board of Social Work; Margaret Everson, Benjy Kinman, Rocky Pritchert, Department of Fish and Wildlife Resources; Donna Duncan, Catherine Staib, Chuck Willis, Economic Development Cabinet, Caroline Mudd, Mark Mangeot, Chuck Massarone, Joey Stanton, Charles Wilkerson, Verman Winburn, Kentucky Parole Board; Ann Dangelo, Kim Jenkins, Willie Payton, Randall Royer, Todd Shipp, Alice Wilson, Transportation Cabinet; Kevin Brown, Denise Hagan, Leigh Ann Welch, Charlotte Beason, Sandi Clark, Karen Erwin, Department of Education; Bill Denton, Clay Lamb, Education and Workforce Development Cabinet; Johnny Greene, Mike Haynes, Office of Mine Safety; William Nold, Department of Insurance; Michael Bennett, Dan Chapman, Department of Housing, Buildings and Construction; Carolyn Kisler, Anne Swinford, Mike Weinrauch, Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on Tuesday, November 10, 2009, and submits this report:

**Administrative Regulations Reviewed by the Subcommittee:**

**PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified**

101 KAR 2:210 & E. 2010 Plan Year Handbook for the Public Employee Health Insurance Program Joe Cowles, deputy executive director, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**GENERAL GOVERNMENT CABINET: Board of Chiropractic Examiners: Board**

201 KAR 21:041. Licensing; standards, fees. Jim Grawe, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, and 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend the forms incorporated by reference to conform to this administrative regulation and applicable statutory provisions. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Social Work: Board**

201 KAR 23:075. Continuing education. Jay Davidson, vice chair; Jim Grawe, general counsel; and Margaret Hazlette, executive director, represented the board.

A motion was made and seconded to approve the following

amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (2) to amend Sections 1 to 8, 11, and 12 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish**

301 KAR 1.015. Boats and motor restrictions. Margaret Everson, counsel, and Benjy Kinman, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Sections 1, 4, and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Game**

301 KAR 2:225 & E. Dove, wood duck, teal and other migratory game bird hunting.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 5 and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**CABINET FOR ECONOMIC DEVELOPMENT: Kentucky Economic Development Finance Authority: Kentucky Reinvestment Act (KRA)**

307 KAR 9.010 & E. Application for Kentucky Reinvestment Act Program. Donna E. Duncan, commissioner, and Catherine Staib, assistant general counsel, represented the authority.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 3 to: (1) correct citations; and (2) to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**JUSTICE AND PUBLIC SAFETY CABINET: Kentucky Parole Board: Board**

501 KAR 1.030. Determining parole eligibility. Caroline W. Mudd, parole board chair; Mark Mangeot, Justice and Public Safety Cabinet; and Verman R. Winburn, parole board member, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(1)(a) and (b) to limit the fifteen (15) percent initial parole eligibility date to nonviolent Class D offenders with a one (1) to five (5) year sentence in accordance with KRS 439.340(3)(a); (2) to amend Section 3(1)(d) to conform the parole eligibility standards for violent offenders to the violent offender statute, KRS 439.340(1); (3) to amend Section 3(1)(p) to allow a two (2) member hearing panel for returning parolees in accordance with KRS 439.320(4); (4) to delete Section 3(2), eligibility standards for participants in the First Incarceration Shock Treatment (FIST) Program, as the program is no longer in effect; (5) to amend appeal procedures to require a quorum to overturn a denial of parole, and (6) to amend Sections 1, 3, and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Vehicle Licensing: Motor Vehicle Tax**

601 KAR 9:130. Motor vehicle registration. Ann D'Angelo, as-

sistant general counsel; Kim Jenkins, legislative liaison; and Todd Shipp, senior counsel and special assistant, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 9, 11 through 13, and 17 through 19 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Sections 16 and 17 to clarify the procedure if a special license plate application is proposed to the General Assembly in addition to going through the routine procedure. Without objection, and with agreement of the agency, the amendments were approved.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Chief State School Officer**

701 KAR 5:031. Repeal of 701 KAR 5:035. Kevin C. Brown, general counsel, and Denise Hagan, acting director, represented the department.

**Food Service Program**

702 KAR 6:010. Local responsibilities.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

702 KAR 6:020. District school nutrition director.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220, and (3) to amend Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

702 KAR 6:031. Repeal of 702 KAR 6:030.

702 KAR 6:040. Personnel; policies and procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220, and (3) to amend Sections 4 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

702 KAR 6:045. Personnel; school nutrition employee qualifications

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 5, and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

702 KAR 6:075. Reports and funds.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1, 2, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

702 KAR 6:090. Minimum nutritional standards for foods and

beverages available on public school campuses during the school day; required nutrition and physical activity reports.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**School Terms, Attendance and Operation**

702 KAR 7:125. Pupil attendance

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, 3, 10, 12, and 16 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 3 to specify that a full day of attendance shall be recorded for a pupil in attendance at least sixty-five (65) percent, rather than more than eighty-four (84) percent, of the regularly-scheduled school day; and (5) to amend Section 14 to specify when to use the designation "Hispanic/Latino". Without objection, and with agreement of the agency, the amendments were approved.

702 KAR 7:140. School district calendar

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to clarify that this administrative regulation covers school calendars; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

**Health and Physical Education Programs**

704 KAR 4:020. School health services.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, 4, 5, and 6 to comply with the drafting and format requirements of KRS Chapter 13A, and (4) to amend the material incorporated by reference to update one of the required forms. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Workforce Investment: Office of Career and Technical Education: Personnel System for Certified and Equivalent Employees**

780 KAR 3:020. Compensation plan. Bill Denton, ombudsman, and Clay Lamb, staff attorney, represented the office.

In response to a question by Senator Kerr, Mr. Denton stated that the fee rate increase for a lesson plan was necessary based on the time it took to review the plan.

In response to questions by Representative Damron, Mr. Denton stated that the fee was last raised in Spring 2009 and that the estimated fiscal impact was \$1,500. He also stated that all of the funding was federal.

780 KAR 3:072. Attendance, compensatory time, and leave for certified and equivalent service.

**Unclassified Personnel Administrative Regulations**

780 KAR 6:062. Attendance, compensatory time and leave for unclassified service.

**ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Office of Mine Safety and Licensing: Division of Mining**

805 KAR 5:030. Prohibition against working or traveling under an unsupported roof; penalties. Johnny Greene, executive director, and Mike Haines, general counsel, represented the division.

In response to a question by Co-Chair Combs, Mr. Greene stated that the administrative regulation was concerned with deleting superfluous adjudicating language. He also stated that the administrative regulation, as amended, would comply with current statutes.

A motion was made and seconded to approve the following amendments: (1) To amend the RELATES TO and STATUTORY AUTHORITY paragraphs to delete superfluous citations; (2) To amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220, and (3) To amend Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Miner Training, Education and Certification**

805 KAR 7:060. Program approval.

A motion was made and seconded to approve the following amendments: (1) To amend the STATUTORY AUTHORITY paragraph to correct citations; (2) To amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) To amend Sections 2 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Sanctions and Penalties**

805 KAR 8:060. Criteria for the imposition and enforcement of sanctions against licensed premises.

A motion was made and seconded to approve the following amendments: (1) To amend the RELATES TO paragraph to add a statutory citation; and (2) To amend Sections 2 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **PUBLIC PROTECTION CABINET: Department of Insurance: Health and Life Division: Trade Practices and Frauds**

806 KAR 12:070. Life insurance application requirements. William Nold, director of the Health and Life Division, represented the division.

A motion was made and seconded to approve the following amendments: (1) To amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) To amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Life Insurance and Annuity Contracts**

806 KAR 15:080. Paid-up life insurance policies.

In response to questions by Representative Damron, Mr. Nold stated that this administrative regulation only affected the reporting process. He also stated that the original reporting process provided for two (2) electronic reporting systems, but one (1) of the two (2) was never used and is being deleted because it was not used and it did not report data in a format the division needed. He added that the division had not yet had a request from a consumer regarding if a policy was paid up, but did have a system in place if such a request was received.

In response to questions by Representative Lee, Mr. Nold stated that a different administrative regulation was in place to address issues of disclosure to insureds regarding long-term care policies. He also stated that this administrative regulation only covered policies purchased after 2003, when rate stabilization was required based on actuarial tables. Policies in place prior to rate stabilization had a different process for approving rate increases. He added that the Department of Insurance had denied some rate increase requests.

In response to questions by Representative Damron, Mr. Nold stated that problems with insurance pools losing members who did not use the policies was not as big of an issue with long-term care policies as it had been with health policies, such as cancer policies.

He also stated that the main problem was that the insurance industry had overestimated the number of policies that would lapse due to death or nonpayment. He added that the division had stringent disclosure requirements.

Representative Damron stated that it was difficult for many seniors to understand the complicated terms of these contracts even with the disclosure requirements.

A motion was made and seconded to approve the following amendment: to amend Section 5 to correct a statutory citation. Without objection, and with agreement of the agency, the amendment was approved.

#### **Health Insurance Contracts**

806 KAR 17:020. Disclosure of other coverage in application.

A motion was made and seconded to approve the following amendments: (1) To amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly establish the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) To amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:391E. Repeal of 806 KAR 17:390, 17:400, 17:410, 17:420, 17:430.

806 KAR 17:570 & E. Minimum standards for Medicare supplement insurance policies and certificates.

#### **Department of Housing, Buildings, and Construction: Division of Building Code Enforcement: Manufactured Homes and Recreational Vehicles**

815 KAR 25:100. Alternative dispute resolution and mediation program. Michael D. Bennett, staff attorney, and Dan Chapman, supervisor, represented the division.

In response to a question by Representative Lee, Mr. Chapman stated that local governments were authorized by statute to pass more stringent requirements than the state requirements for manufactured homes as long as the minimum state requirements were met.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make technical corrections; and (3) to amend Sections 2 through 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Electrical Inspectors**

815 KAR 35:080. Code of ethics.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add a citation to the executive order that reorganized the department; and (2) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A; to add proof of compliance with KRS 227A.040(8), which requires the department to accept comments and advice from the Electrical Advisory Committee prior to promulgation of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

#### **CABINET FOR HEALTH AND FAMILY SERVICES: Commission for Children with Special Health Care Needs: Division of Clinical and Augmentative Services: Children with Special Health Care Needs Services**

911 KAR 1:085. Early hearing detection and intervention program. Carolyn Kisler, audiology and early hearing development intervention branch manager, and Anne Swinford, division director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(6) to specify a December 1 deadline to apply for continuing approval as an infant audiological assessment and diagnostic center; (2) to amend Section 5 to specify notice and hearing procedures for complaints against approved centers; (3) to amend Section 6(1) to require a center to submit

documentation of referrals to the Kentucky Early Intervention System in accordance with KRS 211.647(5); (4) to amend Section 9(1) to clarify that the newborn auditory screening must include at least one (1) of the three (3) listed tests; and (5) to amend Sections 2, 3, 5, 6, 9, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Other Business:** Dave Nicholas introduced a new Subcommittee staff member, Chad Collins. Members of the Subcommittee welcomed Mr. Collins.

**The following administrative regulations were deferred to the December 8, 2009, meeting of the Subcommittee:**

**COUNCIL ON POSTSECONDARY EDUCATION: Nonpublic Colleges**

13 KAR 1:040. Definitions for independent colleges

**PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified**

101 KAR 2:066 & E. Certification and selection of eligibles for appointment.

101 KAR 2:120. Incentive programs.

**FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Purchasing**

200 KAR 5:315. Suspension.

**GENERAL GOVERNMENT CABINET: Kentucky Real Estate Commission: Commission**

201 KAR 11:190. Disciplinary proceedings.

201 KAR 11:250. Listing and purchase contracts and other agreements entered into by licensees; provisions required; seller-initiated relisting request disclosure form.

**Board of Speech-Language Pathology and Audiology: Board**

201 KAR 17:011. Requirement for interim licensure as a Speech Language Pathologist.

201 KAR 17:012. Requirements for licensure of a Speech-Language Pathologist.

201 KAR 17:025. Requirements for an interim license as a Speech-Language Pathology assistant.

201 KAR 17:027. Supervision requirements and caseload limitations of Speech-Language Pathology Assistants.

201 KAR 17:030. License fees and renewal requirements.

201 KAR 17:032. Requirements for interim licensure as an Audiologist.

201 KAR 17:034. Requirements for licensure as a Speech-Language Pathology Assistant

201 KAR 17:036. Requirements for licensure for an Audiologist.

201 KAR 17:038. Caseload limitations.

201 KAR 17:041. Professional code of ethics.

201 KAR 17:090. Continuing education requirements.

201 KAR 17:100. Clinical practice by licensed speech-language pathologists and audiologists in the area of minor training.

**Board of Podiatry: Board**

201 KAR 25:012 & E. Licensing examinations.

**Board of Licensed Professional Counselors: Board**  
201 KAR 36:060. Qualifying experience under supervision.

**ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Public Water Supply**  
401 KAR 8:030. Water treatment plant and water distribution system classification and staffing.

**Division of Compliance Assistance: Certified Operators**  
401 KAR 11 001. Definitions for 401 KAR Chapter 11.

401 KAR 11.010. Boards of certification.

401 KAR 11:020. Standards of professional conduct for certified operators.

401 KAR 11.030. Wastewater treatment and collection system operators, classification and qualifications.

401 KAR 11:040. Water treatment and distribution system operators, classification and qualifications.

401 KAR 11:050. Operator certification.

**Division of Waste Management: Solid Waste Facilities**  
401 KAR 47:090. Solid waste permit fees.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary**  
501 KAR 6:020 & E. Corrections policies and procedures.

501 KAR 6 999 & E. Corrections secured policies and procedures.

**Department of Kentucky State Police: Technical Services Division: Polygraph**  
502 KAR 20:020. Detection of deception examiners.

**PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Division of Licensing: Harness Racing**  
811 KAR 1:070 & E. Licensing standardbred racing.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need**  
900 KAR 6 125. Certificate of Need annual surveys, and registration requirements for new magnetic resonance imaging units.

**Department for Aging and Independent Living: Division of Guardianship: Guardianship**  
922 KAR 5:061. Repeal of 922 KAR 5:060.

**Department for Community Based Services: Division of Family Support: Community Action Agencies**  
922 KAR 6:010 & E. Standards.

**The subcommittee adjourned at 1:55 p.m. until December 8, 2009.**



OTHER COMMITTEE REPORTS

**COMPILER'S NOTE:** In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON EDUCATION**  
**Meeting of November 9, 2009**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of November 9, 2009, having been referred to the Committee on November 4, 2009, pursuant to KRS 13A.290(6):

16 KAR 7:010  
102 KAR 1:130

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

**The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.**

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:  
None

**The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.**

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 9, 2009 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.



## **CUMULATIVE SUPPLEMENT**

### **Locator Index - Effective Dates**

**F - 2**

The Locator Index lists all administrative regulations published in VOLUME 36 of the Administrative Register from July, 2009 through June, 2010. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 35 are those administrative regulations that were originally published in VOLUME 35 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2009 bound Volumes were published.

### **KRS Index**

**F - 10**

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 36 of the Administrative Register.

### **Technical Amendment Index**

**None**

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2009 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

### **Subject Index**

**F - 18**

The Subject Index is a general index of administrative regulations published in VOLUME 36 of the Administrative Register, and is mainly broken down by agency.

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date	Regulation Number	35 Ky.R. Page No.	Effective Date
<b>VOLUME 35</b>					
The administrative regulations listed under VOLUME 35 are those administrative regulations that were originally published in Volume 35 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2009 bound Volumes were published.					
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>			200 KAR 5:315		
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first )			Amended	2779	(See 36 Ky R.)
101 KAR 2:066E			200 KAR 5:380		
Resubmitted	F-1710	1-9-09	Amended	2331	
103 KAR 3:030E	2635	5-14-09	As Amended	2663	7-6-09
Replaced		(See 36 Ky.R.)	200 KAR 6:070	2371	
105 KAR 1:130E	2385	4-15-09	Amended	2764	(See 36 Ky.R.)
Replaced		(See 36 Ky R.)	200 KAR 14:011		
200 KAR 6:070E	2199	2-17-09	Amended	2332	
Replaced		(See 36 Ky.R.)	As Amended	2664	7-6-09
200 KAR 14:011E	2200	2-19-09	200 KAR 17.010	2474	(See 36 Ky.R.)
Replaced	2664	7-6-09	201 KAR 1:065		
200 KAR 15:010E	1984	2-2-09	Amended	2781	(See 36 Ky.R.)
Expired		8-1-09	201 KAR 1:100		
201 KAR 21:090E	2645	5-12-09	Amended	2782	(See 36 Ky.R.)
Replaced		(See 36 Ky.R.)	201 KAR 2 045		
201 KAR 37:010E	2646	5-7-09	Amended	2484	(See 36 Ky.R.)
Replaced		(See 36 Ky.R.)	201 KAR 2:320	2832	(See 36 Ky.R.)
302 KAR 16:111E	1986	2-13-09	201 KAR 10:050		
Replaced	2429	6-5-09	Amended	F-1834	7-6-09
505 KAR 1:100E	F-1721	1-15-09	201 KAR 16:015	J-1854	10-2-09
Replaced	2741	7-6-09	Amended		
735 KAR 1:010E	2387	4-7-09	201 KAR 18:115		
Replaced		(See 36 Ky R.)	Amended	2335	
735 KAR 1:020E	2391	4-7-09	Amended	2765	7-31-09
Replaced		(See 36 Ky.R.)	201 KAR 18.142		
787 KAR 1:330E	2648	4-17-09	Amended	2337	
Withdrawn		7-10-09	Amended	2768	(See 36 Ky.R.)
806 KAR 18 090E	2395	3-13-09	201 KAR 20 056		
Expired		9-9-09	Amended	2787	8-12-09
811 KAR 2:120E	F-1722	12-31-08	201 KAR 20.057		
Replaced	2743	7-6-09	Amended	2790	8-12-09
907 KAR 1.028E	2650	5-7-09	201 KAR 20.162		
Replaced		(See 36 Ky.R.)	Amended	2791	8-12-09
907 KAR 1.901E(r)	2653	5-7-09	201 KAR 20.225		
Expired		11-3-09	Amended	2340	
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>			As Amended	2666	6-11-09
10 KAR 7:010			201 KAR 20.260		
Amended	1237		Amended	2793	(See 36 Ky.R.)
Withdrawn		12-16-08	201 KAR 20.270		
Amended	2464	(See 36 Ky.R.)	Amended	2341	
10 KAR 7:020			As Amended	2667	6-11-09
Amended	2466	(See 36 Ky.R.)	201 KAR 20.290		
11 KAR 4:080			Amended	2343	
Amended	2314		As Amended	2668	6-11-09
Amended	2315	(See 36 Ky.R.)	201 KAR 20:360		
11 KAR 5 200			Amended	2346	(See 36 Ky.R.)
Amended	2315	(See 36 Ky.R.)	201 KAR 21:090		
11 KAR 18.010			Amended	2796	(See 36 Ky.R.)
Amended	2317	(See 36 Ky.R.)	201 KAR 21:095		
16 KAR 5.010			Amended	2126	
Amended	2321		Amended	2770	(See 36 Ky.R.)
As Amended	2655	6-8-09	201 KAR 22:045		
101 KAR 2:066			Amended	2485	(See 36 Ky.R.)
Amended	F-1815		201 KAR 30:040		
103 KAR 3:010			Amended	2487	7-31-09
Amended	2468	(See 36 Ky.R.)	201 KAR 32:025		
103 KAR 3:030			Amended	J-1866	
Amended	2775	(See 36 Ky.R.)	As Amended	2414	7-31-09
105 KAR 1:130			201 KAR 32:030		
Amended	2472	(See 36 Ky.R.)	Amended	J-1863	
			As Amended	2415	7-31-09
			201 KAR 37:010		
			Amended	2798	(See 36 Ky.R.)

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date	Regulation Number	35 Ky.R. Page No.	Effective Date
300 KAR 7:010	2834	(See 36 Ky.R.)	Repealed	2837	10-2-09
301 KAR 1:201			500 KAR 2.011	2837	10-2-09
Amended	2488	7-30-09	500 KAR 2.020		
301 KAR 2:111			Amended	2817	(See 36 Ky.R.)
Amended	2349		505 KAR 1:100		
As Amended	2670	7-6-09	Amended	F-1851	
301 KAR 2:132			Amended	2454	
Amended	2799	8-28-09	As Amended	2741	7-6-09
301 KAR 2:172			702 KAR 4:160		
Amended	2351		Amended	2142	(See 36 Ky.R.)
As Amended	2671	7-6-09	702 KAR 6.010		
301 KAR 2:178			Amended	2150	(See 36 Ky.R.)
Amended	2354		702 KAR 6.020		
As Amended	2673	7-6-09	Amended	2151	(See 36 Ky.R.)
302 KAR 100.030	2836	(See 36 Ky.R.)	702 KAR 6:031(r)	2187	
401 KAR 5.002			702 KAR 6:040		
Amended	2493	(See 36 Ky.R.)	Amended	2152	(See 36 Ky.R.)
401 KAR 5:005			702 KAR 6:045		
Amended	2507	9-25-09	Amended	2154	(See 36 Ky.R.)
401 KAR 5.055			702 KAR 6:075		
Amended	2520	(See 36 Ky.R.)	Amended	2155	(See 36 Ky.R.)
401 KAR 5.060			702 KAR 6:090		
Amended	2526	9-25-09	Amended	2157	(See 36 Ky.R.)
401 KAR 5.065			702 KAR 7:065		
Amended	2551	9-25-09	Amended	2158	(See 36 Ky.R.)
401 KAR 5:080			702 KAR 7:130	483	
Amended	2559	9-25-09	As Amended	1461	1-5-09
401 KAR 8.010			735 KAR 1:010		
Amended	2804	(See 36 Ky.R.)	Amended	2565	(See 36 Ky.R.)
401 KAR 8.022			735 KAR 1.020		
Amended	2806	(See 36 Ky.R.)	Amended	2570	(See 36 Ky.R.)
401 KAR 8.040			780 KAR 1:010		
Amended	F-1844		Amended	1891	(See 36 Ky.R.)
As Amended	2677	7-6-09	806 KAR 17:480		
401 KAR 8.050			Amended	1607	
Amended	F-1847	7-6-09	Amended	2081	
401 KAR 8.075			As Amended	2742	7-6-09
Amended	2808	(See 36 Ky.R.)	810 KAR 1.009		
401 KAR 8:510			Amended	2573	(See 36 Ky.R.)
Amended	2810	(See 36 Ky.R.)	810 KAR 1:025		
401 KAR 8:600		(See 36 Ky.R.)	Amended	1610	
Amended	2812		Withdrawn		7-17-09
401 KAR 10.026			810 KAR 1.026		
Amended	129		Amended	2577	(See 36 Ky.R.)
Amended	860		811 KAR 1:070		
As Amended	2679	7-6-09	Amended	1617	
401 KAR 10:029			811 KAR 2:120		
Amended	157		Amended	F-1914	
Amended	904		As Amended	2743	7-6-09
As Amended	2721	7-6-09	815 KAR 7:120		
401 KAR 10.030			Amended	2359	
Amended	161		Amended	2772	(See 36 Ky.R.)
Amended	908	(See 36 Ky.R.)	815 KAR 7.125		
401 KAR 10.031			Amended	2362	(See 36 Ky.R.)
Amended	177		815 KAR 10:060		
Amended	930		Amended	2364	(See 36 Ky.R.)
As Amended	2723	7-6-09	815 KAR 20:020		
401 KAR 47:090			Amended	2582	(See 36 Ky.R.)
Amended	2814	(See 36 Ky.R.)	815 KAR 20:060		
401 KAR 101.001	F-1947		Amended	2586	(See 36 Ky.R.)
As Amended	2733	7-6-09	815 KAR 20.070		
401 KAR 101:010	F-1949		Amended	2588	(See 36 Ky.R.)
As Amended	2734	7-6-09	815 KAR 20.071		
401 KAR 101:020	F-1951		Amended	2591	(See 36 Ky.R.)
As Amended	2735	7-6-09	815 KAR 20:074		
401 KAR 101:030	F-1954		Amended	2593	(See 36 Ky.R.)
As Amended	2737	7-6-09	815 KAR 20:077		
401 KAR 101:040	F-1956		Repealed	2624	7-29-09
As Amended	2738	7-6-09	815 KAR 20:079(r)	2624	7-29-09
500 KAR 2:010			815 KAR 20:090		

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Amended	2594	(See 36 Ky.R.)	Amended	1640	
815 KAR 20:100			As Amended	2749	7-6-09
Amended	2598	(See 36 Ky.R.)	907 KAR 1 650		
815 KAR 20:120			Amended	1644	
Amended	2601	(See 36 Ky.R.)	As Amended	2751	7-6-09
815 KAR 20:130			907 KAR 1.655		
Amended	2608	(See 36 Ky.R.)	Amended	1649	
815 KAR 20:170			As Amended	2754	7-6-09
Amended	2612	(See 36 Ky.R.)	907 KAR 3:170		
815 KAR 20:195			Amended	F-1923	
Amended	2613	(See 36 Ky.R.)	Amended	2456	
815 KAR 25.060			As Amended	2757	7-6-09
Amended	2367		908 KAR 3.050		
As Amended	2746	7-6-09	Amended	2618	7-31-09
900 KAR 5:020			908 KAR 3.060		
Amended	F-1918		Amended	2620	7-31-09
Amended	2455	(See 36 Ky R.)	911 KAR 2:200		
900 KAR 7:030	2838	(See 36 Ky R.)	Amended	2825	(See 36 Ky R.)
902 KAR 19.021	2842	8-12-09			
902 KAR 47.200	2843	(See 36 Ky R.)			
902 KAR 55:110					
Amended	2615	7-31-09			
907 KAR 1:028					
Amended	2822	(See 36 Ky R.)			
907 KAR 1:585					
Amended	1637				
Amended	F-1802				
As Amended	2747	7-6-09			
907 KAR 1.645					

\* Statement of Consideration not filed by deadline

\*\* Withdrawn, not in effect within 1 year of publication

\*\*\* Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

## VOLUME 36

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

13 KAR 2.045E	971	10-11-09
101 KAR 2:066E	275	7-8-09
101 KAR 2:102E	277	7-10-09
101 KAR 2.210E	719	9-15-09
101 KAR 3.015E	282	7-15-09
103 KAR 3:030		(See 35 Ky.R.)
Replaced	310	9-4-09
103 KAR 5:180E	1163	11-13-09
103 KAR 5:190E	1166	11-13-09
103 KAR 17:150E	533	7-23-09
103 KAR 44:130	535	8-14-09
105 KAR 1:130E		(See 35 Ky.R.)
Replaced	19	7-29-09
105 KAR 1:390E	4	6-15-09
Replaced	141	10-2-09
200 KAR 6.070E		(See 35 Ky.R.)
Replaced	20	7-29-09
201 KAR 12:105E	6	6-11-09
201 KAR 21.090E		(See 35 Ky.R.)
Replaced	568	9-16-09
201 KAR 25.012E	720	8-19-09
201 KAR 37:010		(See 35 Ky.R.)
Replaced	573	10-2-09
301 KAR 2:221E	1168	11-3-09
301 KAR 2:222E	1171	11-3-09
301 KAR 2:225E	721	8-28-09
307 KAR 8.010E	536	8-4-09
307 KAR 9:010E	724	8-20-09
401 KAR 51:001E	725	9-14-09
401 KAR 51:017E	738	9-14-09
401 KAR 51:052E	754	9-14-09
405 KAR 8.015E	1178	11-3-09

501 KAR 6 020E	767	9-11-09
501 KAR 6:999E	770	9-11-09
505 KAR 1:160E	1180	11-13-09
703 KAR 5 080E	8	6-15-09
Replaced	159	9-14-09
750 KAR 1 010E	1181	11-13-09
735 KAR 1.010E		(See 35 Ky.R.)
Replaced	65	7-13-09
735 KAR 1.020E		(See 35 Ky.R.)
Replaced	67	7-13-09
806 KAR 17:391E	287	6-25-09
806 KAR 17:570E	288	6-26-09
810 KAR 1:025E	537	7-20-09
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810 KAR 1.034E	982	9-30-09
811 KAR 1.034E	986	9-30-09
811 KAR 1.070E	545	7-20-09
815 KAR 7:120E	990	10-01-09
815 KAR 20:050E	992	10-01-09
906 KAR 1:180E	1184	11-13-09
907 KAR 1:028E	820	(See 35 Ky.R.)
Replaced	330	8-12-09
907 KAR 3:183E	306	6-26-09
Replaced		11-6-09
921 KAR 2 017E	1190	11-2-09
922 KAR 1.060E	994	9-30-09
922 KAR 6:010E	773	8-28-09

### ORDINARY ADMINISTRATIVE REGULATIONS:

10 KAR 7:010		(See 35 Ky.R.)
As Amended	10	7-31-09
10 KAR 7:020		(See 35 Ky.R.)
As Amended	12	7-31-09
11 KAR 3:100		
Amended	109	10-12-09
11 KAR 4:080	13	(See 35 Ky R.)
As Amended		7-13-09

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11 KAR 5:145			As Amended	20	7-29-09
Amended	123	10-12-09	200 KAR 15:010		
11 KAR 5:200		(See 35 Ky.R.)	Amended	836	
As Amended	13	7-13-09	200 KAR 17:010		(See 35 Ky.R.)
11 KAR 18:010		(See 35 Ky.R.)	As Amended	21	7-29-09
As Amended	14	7-13-09	201 KAR 1:065		(See 35 Ky.R.)
13 KAR 1:020			As Amended	319	9-4-09
Amended	826		201 KAR 1:100		
Amended	1232		Amended	2782	(See 35 Ky.R.)
13 KAR 1:040	942		As Amended	319	9-4-09
13 KAR 1:050	943		201 KAR 2:045		(See 35 Ky.R.)
Amended	1241		As Amended	321	8-12-09
13 KAR 2:045			201 KAR 2:320		
Amended	1083		Amended	618	
16 KAR 2:010			As Amended	778	10-21-09
Amended	1294		201 KAR 10:050		
16 KAR 2:120			Amended	1301	
Amended	1297		201 KAR 11:121		
16 KAR 2:200	1390		Amended	429	
16 KAR 7:010			As Amended	1012	
Amended	630		201 KAR 11:190		
As Amended	998		Amended	430	
16 KAR 8:030			201 KAR 11:215	485	
Amended	125		As Amended	1013	
As Amended	553	9-14-09	201 KAR 11:230		
31 KAR 2:010			Amended	143	
Amended	1087		As Amended	565	10-02-09
31 KAR 2:020	1141		201 KAR 11:250		
31 KAR 3:010			Amended	433	
Amended	1095		As Amended	1014	
101 KAR 2:066			201 KAR 11:300		
Amended	414		Amended	434	
101 KAR 2:102			As Amended	1014	
Amended	416		201 KAR 11:450		
As Amended	1002		Amended	435	
101 KAR 2:120			As Amended	1015	
Amended	420		201 KAR 12:105		
101 KAR 2:210			Amended	147	
Amended	835		As Amended	1016	
As Amended	1194		201 KAR 14:056 (r)	1143	
101 KAR 3:015			201 KAR 14:105		
Amended	423		Amended	437	
As Amended	1006		As Amended	779	11-6-09
102 KAR 1:310	703		201 KAR 17:011		
As Amended	1010		Amended	839	
103 KAR 3:010		(See 35 Ky.R.)	201 KAR 17:012		
As Amended	16		Amended	841	
103 KAR 3:020			201 KAR 17:025		
Amended	129		Amended	843	
As Amended	555	10-02-09	201 KAR 17:027		
103 KAR 3:030		(See 35 Ky.R.)	Amended	845	
As Amended	310	9-4-09	201 KAR 17:030		
103 KAR 3:050			Amended	847	
Amended	134		201 KAR 17:032	948	
As Amended	560	10-02-09	201 KAR 17:034	950	
103 KAR 5:180	1391		201 KAR 17:036	951	
103 KAR 5:190	1394		201 KAR 17:038	952	
103 KAR 17:150	704		201 KAR 17:041		
As Amended	1011		Amended	849	
103 KAR 44:130	706		201 KAR 17:090		
As Amended	1012		Amended	851	
105 KAR 1:130		(See 35 Ky.R.)	201 KAR 17:100		
As Amended	19	7-29-09	Amended	854	
105 KAR 1:390			201 KAR 18:142		(See 35 Ky.R.)
Amended	141	10-02-09	As Amended	25	7-31-09
200 KAR 5:314			201 KAR 20:163		
Amended	1300		Amended	1302	
200 KAR 5:315		(See 35 Ky.R.)	201 KAR 20:230		
Amended	616		Amended	1304	
200 KAR 6:070		(See 35 Ky.R.)	201 KAR 20:240		



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As Amended	780	10-21-09	Amended	646	
201 KAR 20:260		(See 35 Ky.R.)	201 KAR 36:060		
As Amended	322	8-12-09	Amended	858	
201 KAR 20:360		(See 35 Ky.R.)	201 KAR 37:010		(See 35 Ky.R.)
As Amended	26	7-31-09	As Amended	573	10-2-09
201 KAR 20:370			300 KAR 7:010		(See 35 Ky.R.)
Amended	528		As Amended	574	10-2-09
As Amended	781	10-21-09	301 KAR 1:015		
201 KAR 20:450			Amended	860	
Amended	527		As Amended	1198	
201 KAR 20:411			301 KAR 1:016		
Amended	530		Amended	1099	
As Amended	782	10-21-09	301 KAR 2:142		
201 KAR 21:041			Amended	863	
Amended	855		301 KAR 2:221		
As Amended	1194		Amended	1316	
201 KAR 21:090		(See 35 Ky.R.)	301 KAR 2:222		
As Amended	568	9-16-09	Amended	1319	
201 KAR 21:095		(See 35 Ky.R.)	301 KAR 2:225		
As Amended	29	7-31-09	Amended	865	
201 KAR 22:045		(See 35 Ky.R.)	As Amended	1199	
As Amended	29	7-31-09	301 KAR 2:251		
201 KAR 22 053			Amended	439	10-23-09
Amended	1305		301 KAR 3:022		
201 KAR 23 075			Amended	1105	
Amended	635		302 KAR 20:040		
As Amended	1195		Amended	1326	
201 KR 25:012			302 KAR 20 052		
Amendment	857		Amended	1331	
201 KAR 30:010			302 KAR 39 020		
Amended	147	10-2-09	Amended	1108	
201 KAR 30:030			302 KAR 100 030		(See 35 Ky.R.)
Amended	150		As Amended	324	8-28-09
As Amended	568	10-2-09	307 KAR 8:010	708	
201 KAR 30:050			As Amended	1021	
Amended	152		307 KAR 9:010	954	
Amended	569		As Amended	1201	
201 KAR 30 070			401 KAR 5:002		(See 35 Ky.R.)
Amended	154		Amended	337	9-25-09
As Amended	571	10-2-09	401 KAR 5:055		(See 35 Ky.R.)
201 KAR 30:180			As Amended	575	
Amended	156		Reprinted	1427	9-25-09
As Amended	571	10-2-09	401 KAR 5:310	486	
201 KAR 32:035			401 KAR 8:010		(See 35 Ky.R.)
Amended	1097		As Amended	579	9-25-09
201 KAR 33:010			401 KAR 8:022		(See 35 Ky.R.)
Amended	1307		As Amended	581	9-25-09
201 KAR 33:015			401 KAR 8:030		
Amended	1308		Amended	442	
201 KAR 33:020			Amended	1041	
Amended	1310		401 KAR 8:040		
201 KAR 33:030			Amended	1110	
Amended	1311		401 KAR 8:075		(See 35 Ky.R.)
201 KAR 30:050			Amended	409	9-25-09
Amended	1314		401 KAR 8:100		
201 KAR 34:010			Amended	1113	
Amended	638		401 KAR 8:510		(See 35 Ky.R.)
As Amended	1017		As Amended	582	9-25-09
201 KAR 34:015			401 KAR 8:600		(See 35 Ky.R.)
Amended	639		Amended	411	9-25-09
201 KAR 34:020			401 KAR 10:030		(See 35 Ky.R.)
Amended	641		As Amended	31	7-30-09
As Amended	1018		401 KAR 11:001		
201 KAR 34:030			Amended	449	
Amended	642		Amended	1047	
As Amended	1018		401 KAR 11:010		
201 KAR 34:040			Amended	450	
Amended	645		Amended	1049	
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401 KAR 11:030			702 KAR 7:125		
Amended	454		Amended	466	
Amended	1052		As Amended	1212	
401 KAR 11:040	490		702 KAR 7:140	497	
Amended	1055		As Amended	1217	
401 KAR 11:050			703 KAR 5 080		
Amended	456		Amended	159	
Amended	1059		As Amended	1024	9-14-09
401 KAR 47:090		(See 35 Ky.R.)	704 KAR 4 020		
Amended	620		Amended	653	
401 KAR 51:001			As Amended	1218	
Amended	867		725 KAR 1.020		
Amended	1247		Amended	1334	
401 KAR 51:017			725 KAR 1.025	1398	
Amended	880		725 KAR 2.060		
Amended	1260		Amended	1335	
401 KAR 51:052			725 KAR 2.070		
Amended	895		Amended	1337	
Amended	1275		735 KAR 1.010		(See 35 Ky.R.)
401 KAR 60:005			As Amended	65	7-13-09
Amended	459	10-23-09	735 KAR 1:020		(See 35 Ky.R.)
401 KAR 60:671	493	10-23-09	As Amended	67	7-13-09
405 KAR 8.015	1397		750 KAR 1:010		
405 KAR 16:140			Amended	1339	
Amended	648		780 KAR 3.020		
As Amended	1021		Amended	926	
405 KAR 18:140			780 KAR 3:072		
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As Amended	1023		780 KAR 6:062		
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As Amended	582	10-2-09	787 KAR 2:020		
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Amended	910		803 KAR 2:300		
As Amended	1201		Amended	160	
501 KAR 6 020			As Amended	586	10-2-09
Amended	913		803 KAR 2:306		
501 KAR 6.999			Amended	162	
Amended	916		As Amended	586	10-2-09
502 KAR 20.020			803 KAR 2:308		
Amended	919		Amended	165	
502 KAR 20:020			As Amended	587	10-2-09
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As Amended	784	11-6-09	As Amended	588	10-2-09
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601 KAR 9:130			As Amended	588	10-2-09
Amended	921		803 KAR 2:402		
As Amended	1205		Amended	175	
601 KAR 12:060			As Amended	592	10-2-09
Amended	1116		803 KAR 2:403		
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As Amended	787	10-23-09	As Amended	1037	
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As Amended	789		815 KAR 7:120		(See 35 Ky R.)
As Amended	1024		As Amended	75	7-29-09
805 KAR 1:200	227		Amended	1129	
As Amended	793	10-23-09	815 KAR 7:125		(See 35 Ky.R.)
806 KAR 3:150	199		As Amended	76	7-29-09
Amended			Amended	1132	
As Amended	794	11-6-09	815 KAR 8 040		
805 KAR 5.030			Repealed	609	9-24-09
Amended	656		815 KAR 8.041 (r)		(See 36 Ky.R.)
Amended	1062		As Amended	609	9-24-09
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805 KAR 7:060			Amended	1347	
Amended	658		815 KAR 8.020		
As Amended	1221		Amended	1350	
806 KAR 6:100			815 KAR 8:050	1400	
Amended	201		815 KAR 8:060	1400	
As Amended	595	10-2-09	815 KAR 10:060		(See 35 Ky R.)
805 KAR 8:060			As Amended	77	7-29-09
Amended	660		815 KAR 20:020		(See 35 Ky R.)
As Amended	1222		As Amended	80	7-29-09
806 KAR 10.030			815 KAR 20:050		
Amended	471		Amended	1134	
As Amended	795	11-6-09	815 KAR 20:060		(See 35 Ky R.)
806 KAR 10 050			As Amended	83	7-29-09
Amended	473		815 KAR 20:070		(See 35 Ky R.)
As Amended	796	11-6-09	As Amended	85	7-29-09
806 KAR 12 070			815 KAR 20:071		(See 35 Ky R.)
Amended	664		As Amended	87	7-29-09
As Amended	1225		815 KAR 20:074		(See 35 Ky.R.)
806 KAR 15 080			As Amended	88	7-29-09
Amended	666		815 KAR 20:090		(See 35 Ky R.)
As Amended	1225		As Amended	88	7-29-09
806 KAR 17.020			Amended	1352	
Amended	668		815 KAR 20:100		(See 35 Ky.R.)
As Amended	1226		As Amended	92	7-29-09
806 KAR 17.320			815 KAR 20:120		(See 35 Ky R.)
Amended	474		As Amended	93	7-29-09
As Amended	797	11-6-09	815 KAR 20:130		(See 35 Ky.R.)
806 KAR 17:570	499		As Amended	99	7-29-09
Amended	1064		815 KAR 20:170		(See 35 Ky.R.)
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Amended	669		As Amended	1227	
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Amended	1118		Amended	688	
810 KAR 1:026		(See 35 Ky.R.)	As Amended	1037	
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811 KAR 1:015			As Amended	1227	
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811 KAR 1:020			815 KAR 35:100		
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811 KAR 1:034	1149		As Amended	614	
811 KAR 1:070			As Amended	802	
Amended	676		900 KAR 5:020		9-24-09
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Amended	684		900 KAR 6.030		8-12-09

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As Amended	804	10-21-09	Amended	1137	
900 KAR 6:065	233		922 KAR 1:320		
As Amended	805	10-21-09	Amended	1376	
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(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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